

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

Gina Michelle Moore, individually)	
and d/b/a Warbird Sky)	
Ventures, Inc.)	
)	
COMPLAINANT)	
)	Docket No. 16-07-16
v.)	February 27, 2009
)	
Sumner County Regional)	
Airport Authority)	
)	
RESPONDENT)	

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on a formal complaint filed in accordance with the Rules of Practice for *Federally-Assisted Airport Enforcement Proceedings*, Title 14 Code of Federal Regulations (CFR) Part 16.

Gina Michelle Moore, owner of Warbird SkyVentures, Inc., (Complainant), has served a formal complaint pursuant to 14 CFR Part 16 against the Sumner County Regional Airport Authority (SCRAA or Respondent), owner and operator of the Sumner County Regional Airport (the Airport). The Complainant alleges the Respondent has violated Constitutional law, her civil liberties, Federal Grant Assurances, and Tennessee Code.¹

The issues presented for FAA decision are:

- Whether the Respondent applied the Airport's Minimum Standards in a way to unjustly discriminate against the Complainant in violation of 49 U.S.C. § 47107(a)(1), and Federal Grant Assurance 22, *Economic Nondiscrimination*.
- Whether the Respondent's failure to grant the Complainant an agreement to operate an aeronautical service constitutes an unreasonable denial of access in violation of 49 U.S.C. § 47107(a)(1), and Grant Assurance 22, *Economic Nondiscrimination*.
- Whether the Respondent has limited the provision of specific aeronautical services at the Airport to a single provider in violation of 49 U.S.C. § 47107(a)(4), and Grant Assurance 23, *Exclusive Rights*.

¹ As stated in the FAA's Docket Notice, allegations of violations of due process, right to privacy, equal protection, right to face accusers, and slander are outside the jurisdiction of 14 CFR Part 16. Facts pertaining to these types of violations may be used as background in a valid Part 16 action and may be considered when determining a sponsor's compliance with its statutory and grant assurance obligations.

- Whether the Respondent's process and procedures for reviewing the Complainant's request to provide an aeronautical service at the Airport ceded its rights and powers in violation of 49 U.S.C. § 47107(a) and Grant Assurance 5, *Preserving Rights and Powers*.

Summary of Issues and Findings

The Complainant alleges the SCRAA violated Federal law and policy when acting on her request to establish an aircraft maintenance and repair business at the Airport. She states that this request was approved at the February 26, 2007 SCRAA meeting, but was then rescinded at their meeting the following month. She also asserts that the SCRAA is responsible for her eviction from the hangar she subleased through a third party at the Airport. The Director believes the issues identified above present the Complainant's concern in a manner that can be analyzed within the scope of a Part 16 proceeding.²

The SCRAA states that the Complainant did not make proper application with regards to her request to establish an aircraft maintenance and repair business at the Airport. The SCRAA argues that the Complainant's agreement to operate a business on the Airport expired in June 2004. In its Answer to the Complaint, the SCRAA requested the matter be dismissed as the Complainant failed to identify violations of specific Federal Grant Assurances, improperly identified the Respondent, and did not seek to resolve the matter through informal channels.³

The Complainant sought mediation through the Tennessee Department of Transportation's Aeronautics Division, but was not satisfied with the outcome of the informal dispute resolution. As such, the Complainant opted to pursue the matter through 14 CFR Part 16.

The Director notes that the Complaint lacked precision in its explanation of the alleged grant assurance violations. However, the FAA accepted this Complaint under 14 CFR Part 16 and investigated the allegations therein because the Complainant raised issues related to the Airport Authority's obligations under its grant agreements. Part 16 governs all proceedings involving Federally-assisted airports under the authority of the assurances contained in grant-in-aid agreements issued under the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq* and agreed to by the Authority as sponsor of the Sumner County Regional Airport Authority. This Determination does not preclude the FAA from taking any action(s) it deems appropriate in regard to the Authority's present or future compliance with any provisions of law or regulation.

Under the particular circumstances existing at the Airport and the evidence of record, as discussed below, the FAA concludes that:

- The Respondent did not apply the Airport's Minimum Standards in a way to unjustly discriminate against the Complainant, and is not currently in violation of 49 U.S.C. § 47107(a)(1), and Federal Grant Assurance 22, *Economic Nondiscrimination*.
- The Respondent's failure to grant the Complainant an agreement to operate an aeronautical service does not constitute an unreasonable denial of access in violation of 49 U.S.C. § 47107(a)(1), and Grant Assurance 22, *Economic Nondiscrimination*.

² The initial Complaint lacked precision in its alleged violations of the Respondent's federal obligations and cited to an incorrect/inapplicable Federal Grant Assurance. The Complainant's Reply and Response to the Director's Request for Additional Information contained allegations of violations of Federal Grant Assurances; however, several of the assurance violations identified are either not explained or do not apply to the Complainant's situation. This matter is fully addressed in Section VI of this Determination.

³ The Director denies the Respondent's Motion to Dismiss. This is fully discussed in Section VI of this Determination.

- The Respondent has not limited the provision of specific aeronautical services at the Airport to a single provider, and is not in violation of 49 U.S.C. § 47107(a)(4), and Grant Assurance 23, *Exclusive Rights*.
- The Respondent's process and procedures for reviewing the Complainant's request to provide an aeronautical service at the Airport lack transparency and documentation making them confounding in nature. These incoherent, ad hoc practices cede the Respondent's ability to adhere to the Grant Assurances which constitutes a violation of 49 U.S.C. § 47107(a) and Grant Assurance 5, *Preserving Rights and Powers*.

The FAA's decision in this matter is based on applicable Federal law and FAA policy, review of the pleadings and supporting documentation submitted by the parties, reviewed by the FAA, which comprises the Administrative Record reflected in the attached FAA Exhibit 1.

II. PARTIES

The Complainant, Gina Michelle Moore, is the Owner-Operator of Warbird SkyVentures, Inc., a barnstorming company.⁴ According to the company's Internet website, Warbird SkyVentures "Provides an instructional hands-on flying in a World War II Warbird." [FAA Exhibit 1, Item 14] In addition to Warbird SkyVentures, the Complainant states she owns a virtual aviation museum, Museum of Aviators. The Complainant proposes opening an aircraft maintenance and repair business called "Old Airplane Shop." [FAA Exhibit 1, Item 1, p. 15]⁵

Sumner County Regional Airport (Airport) is a public-use airport owned and operated by the Sumner County Regional Airport Authority (SCRAA.) The Airport, two nautical miles east of Gallatin, Tennessee, is classified as a general aviation airport with 69 based aircraft and 33,750 annual operations. The Airport has one runway, Runway 17-35, a 5,000 foot long by 100-foot wide asphalt runway. The planning and development of the Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, *et seq.* [FAA Exhibit 1, Item 13]

III. BACKGROUND AND PROCEDURAL HISTORY

Factual Background

The Complainant states, "Warbird Airventures has been flying out of the Sumner County Regional Airport since December 1999." [FAA Exhibit 1, Item 1, exhibit 9] The Complainant further notes that her entry onto the airfield was originally facilitated through a verbal agreement with Gene Gillespie, owner and operator of Gallatin Flying Service, Inc. [FAA Exhibit 1, Item 19, p.1, 2 and 3] At this time, the SCRAA recognized Gallatin Flying Service, Inc., as a full service Commercial Aeronautical Service Provider.⁶ [FAA Exhibit 1, Item 19, exhibit 21, p. 11]

⁴ Documents supplied by the Complainant also refer to the name of her company as "Warbird AirVentures." According to a business information search conducted by the Respondent, Warbird SkyVentures, Inc., was formed on February 8, 2000. The Record is not clear as to when the name "Warbird SkyVentures" was officially adopted.

⁵ The Complainant's pleading was submitted without pagination. The Director paginated this document to provide clarity when discussing the Complainant's evidence.

⁶ The SCRAA Airport Minimum Standards and Rules and Regulations, March 24, 1999 [FAA Exhibit 1, Item 32, p. 2] defines a Commercial Aeronautical Service Provider (CASP) as an entity "duly licensed and authorized by written agreement with the Authority to operate at the Airport under strict compliance with such agreement, and pursuant to these regulations and standards." A full service CASP "provides retail aviation fuel and oil sales and aircraft maintenance" according to additional requirements outlined in the Minimum Standards.

On September 25, 2000, the SCRAA wrote a letter to the Complainant describing terms and rates for corporate leaseholds on the Airport. The letter states, “Only one plot of ground is presently available and the minimum sized hangar which would be approved is 80 ft (front) x 60 ft (deep).” [FAA Exhibit 1, Item 18, exhibit 3]

On December 28, 2000, the SCRAA wrote a letter notifying the Complainant that an agreement to base Warbird Airventures at Sumner County Regional Airport was ready for execution and would remain in effect while Gallatin Flying Service, Inc., is under the jurisdiction of the Trustee of the U.S. Bankruptcy Court. This letter states, “When a New Operator is in place you will be free to negotiate a new agreement with that company in accordance with the Airport’s Rules & Regulations and Minimum Standards.” Although the correspondence contained in the Record is not signed, signature lines were provided for Samuel K. Crocker, Trustee U.S. Bankruptcy Court Middle district of Tennessee, Randy Leath, Chairman SCRAA, and Jan Easterling, Manager, SCRAA. [FAA Exhibit 1, Item 1, exhibit 13]

In February 2001, Gallatin Flying Service, Inc., offered the Complainant a written, one-year lease agreement. This proposal described terms for office space in the terminal building, fuel, engine oil, and hangar/tie-down space. This agreement also stipulated insurance requirements. Although the lease agreement contained in the Record is not signed, signature lines were provided for the lessee, Gallatin Flying Service, Inc., by Jan R. Easterling, Manager and the lessor, Warbird AirVentures, Inc., by Gina Moore, President. [FAA Exhibit 1, Item 18, exhibit 1] An undated, hand-written statement submitted by the Respondent as a separate exhibit states:

“Gina did not return a signed copy of this Agreement as requested. She advised could not/would not agree to a 1-yr lease. Eventually settled on a prorata [sic] day-to-day office rent based on \$150/mo (\$5.00/da) with no assurances as to time limit or any arrangement with new FBO.” [FAA Exhibit 1, Item 18, exhibit 2]

According to the Complainant, her arrangement with Gallatin Flying Service, Inc., ended on March 31, 2001, since the Bankruptcy Trustee discontinued service on that date. [FAA Exhibit 1, Item 1, exhibit 9]

On May 31, 2001, the SCRAA and Global Air Services, Inc., entered into a lease agreement establishing Global Air Services, Inc., as a full service CASP. [FAA Exhibit 1, Item 19, exhibit 21, p. 6]

An undated letter from the SCRAA to the Complainant alludes to a verbal agreement between the two parties which terminated on June 4, 2001 when Global Air Services, Inc., commenced business:

“Your verbal agreement to rent an office in the Terminal Building directly from the Airport Authority on a day-to-day basis, and conduct your operation including the ‘AirVenture’ flights, terminated on June 4, 2001, when the new full-service CASP, Global Air Services, Inc., commenced their business.” [FAA Exhibit 1, Item 1, exhibit 12]

On June 8, 2001, the SCRAA wrote to Stan Smith, President/CEO of Global Air Services, Inc., authorizing him:

“to enter into a verbal agreement, or written agreement, to lease or rent space to Ms. Gina Moore and/or Warbird AirVentures on a day-to-day basis, for a time period beginning Friday, June 08, 2001, and ending Sunday evening, June 10, 2001, for the purposes of allowing Warbird AirVentures to conduct flight operations for their clients.” [FAA Exhibit 1, Item 18, exhibit 5]

On June 11, 2001, the SCRAA wrote a letter notifying the Complainant that prior to any additional CASP operations, a sublease agreement must be made and all operations must comply with the Airport's Minimum Standards. The letter also requested the Complainant to attend the next SCRAA meeting. [FAA Exhibit 1, Item 1, exhibit 11]

On June 19, 2001, the Complainant responded to the SCRAA's June 11, 2001 letter. The Complainant stated that Gallatin Flying Service ceased to exist on March 31, 2001, and that Warbird AirVentures would be represented by the company's Vice-President at the next SCRAA meeting. [FAA Exhibit 1, Item 1, exhibit 9]

On June 20, 2001, the SCRAA responded to the Complainant's June 19th letter. This letter stated that the Complainant, and not her Vice President, was requested to attend the next meeting of the SCRAA. The letter states:

"I am aware that you have attempted to operate a Limited CASP without the written consent of the Authority, which is required by Chapter III Section 9A [of the Sumner County Regional Airport Minimum Standards and Rules and Regulations]. Each CASP must have a written agreement with the Authority, which is required by Chapter III Section 9b. You must comply with Chapter III Sections 9 A-R.

Until you have a sub-lease agreement with a CASP on the field to operate and that agreement has been approved in writing by the full authority All [sic] operations by Warbird Air Ventures must cease and desist. There will not be any further temporary agreements allowing your operations until all requirements are met." [FAA Exhibit 1, Item 1, exhibit 10 and FAA Exhibit 1, Item 18, exhibit 14]

On June 25, 2001, Stan Smith, President of Global FBO, Inc., wrote to the SCRAA requesting the Authority's approval to lease space to Warbird AirVentures. The letter specifically sought, "the ability to sub- lease [sic] the office known as the 'Flight Training Classroom' to Warbird AirVentures, until such time that we have the space to move Warbird AirVentures into one of our other offices for a more permanent, annual arrangement." [FAA Exhibit 1, Item 19, exhibit 9]

The Complainant's representative attended the June 25, 2001 SCRAA meeting. The minutes indicate a discussion about Warbird AirVentures' use of the airport terminal building and signage. A motion was made to "approve Global FBO to sublease to Warbirds the space to operate and Global FBO will monitor compliance with the minimum standards." [FAA Exhibit 1, Item 19, exhibit 8, p. 2] The minutes also state, "again it was emphasized that Warbirds must comply with all minimum standards." [FAA Exhibit 1, Item 19, exhibit 8, p. 2] The following day, the SCRAA sent a letter to the Complainant's representative advising her of the Authority's action. This letter states, "Global FBO, Inc. requested permission to Sub-Lease the office known as the 'Flight Training Classroom' to Warbird AirVentures until such time that they have space to move you into a permanent location." This letter also encourages the Complainant and her representative to familiarize themselves with the Airport Minimum Standards and Rules and Regulations which were enclosed. [FAA Exhibit 1, Item 18, exhibit 6]

On June 26, 2001, Warbird AirVentures, Inc., executed a CASP with the SCRAA. The agreement authorized Warbird AirVentures to provide airplane rides and sell related items such as T-shirts, caps, and videos for a term of three years from the date of the agreement's execution. This agreement required the Complainant to maintain \$1 million in aircraft liability insurance. [FAA Exhibit 1, Item 1, exhibit 15]

The January 2002 SCRAA meeting minutes reflect a modification of the Complainant's CASP agreement⁷:

“Warbirds Air Ventures [sic] asked for modifications to the CASP including tail dragger instruction, checkouts, signoffs and rental. David Blankenship made a motion to amend modify [sic] the CASP and accept the request. Jerry Kirby seconded the motion. The motion passed unanimously. The Authority needs a written copy of the agreement between Global FBO and Warbirds Air Ventures.” [FAA Exhibit 1, Item 19, exhibit 13, p. 1]

The January 2002 SCRAA meeting minutes also discuss the Complainant's rental of a hangar from the Respondent:

“In the Airport Managers [sic] report Gina Moore requested a mailbox and that her hangar rental be prorated from 11 January 2002 when she moved in. Ron Edwards made a motion that all rent is due the first of the month; however if rented during the month the rent will be prorated for that month. This is effective 1 January 2002. David Blankenship seconded the motion. The motion passed unanimously.” [FAA Exhibit 1, Item 19, exhibit 13, p. 2]

At the February 28, 2002 meeting, the SCRAA discusses the sublease between Global Air Services, Inc., and the Complainant. The minutes state, “Mr. Smith indicated that Gina still has the lease and has not yet signed.” [FAA Exhibit 1, Item 19, exhibit 22, p. 2]

On April 22, 2002 the Complainant advised the Respondent of her lease arrangements with Global FBO. The letter states:

“In response to your request on the status of my lease with Global, I have prepared a time line at best my memory and knowledge.

July 2001 Stan agreed to rent Warbird AirVentures space in the terminal building. He said I could continue with the same arrangement I had with the Airport Authority. Knowing that one of the requirements of the Authority was to have it in writing, I requested several times from July through October as of the status of the written lease. Stan always replied I have been busy running my business or flying and did not have time to have it written. Therefore, after 4 months of asking, I gave up and continued my own flying operation.

December 2001 It was asked in the monthly meeting if a written lease was developed and signed. Stan stated that he felt like he had a verbal lease agreement. Mr. Leath said that it had to be written and signed. Stan agreed to have it drawn up and signed.

February 2002 Neldia received a telephone call from Stan stating that we had to sign a lease or be kicked-out per Randy Leath. Neldia faxed over Stan's written lease to me in Jackson, Mississippi. Stan had changed our arrangement significantly enough from our original agreement that changes had to be made to the written version to match our verbal agreement.

⁷ Although this modification is noted in the January 2002 SCRAA meeting minutes [FAA Exhibit 1, Item 19, exhibit 13, p.2], there is no documentation of this change on the copy of the CASP agreement submitted by the Complainant as FAA Exhibit 1, Item 1, exhibit 15 or the Respondent as FAA Exhibit 1 Item 5, Exhibit A, exhibit 3.

March 2002 Stan and I met at the terminal building, and went item by item through his written version and made corrections to match our verbal agreement. Stan said he would have the corrections made and faxed over to my office for a signature. The fax never came. Therefore, I called Stan to see what the hang up was. He stated he needed his lawyer to read the lease before we can sign it.

April 2002 I asked Stan if his lawyer was finished reading the lease, and if so, I can sign it before I leave to go on tour with my plane. He stated his lawyer was still reading it.”
[FAA Exhibit 1, Item 19, exhibit 15]

This letter was acknowledged by the Authority in their April 2002 meeting. The minutes state, “Ms. Moore said in her letter that Mr. Smith refused to give her a lease.” [FAA Exhibit 1, Item 19, exhibit 16, p. 1]

The May 2002 SCRAA meeting minutes imply that Global Air FBO may no longer be operating at the Airport. There is also a discussion regarding the timeframe for selecting a new full service CASP. [FAA Exhibit 1, Item 19, exhibit 17, p. 1] Two discussions regarding the Complainant are noted:

“Mr. Garrett read a letter from War Birds requesting to lease a room. David Blankenship made a motion to allow Ms. Moore to rent the room for \$100 a month. Wayne seconded the motion. The motion was withdrawn during the discussion since the square footage of the room is not known.

Ron Edwards made a motion to put the rent on a month to month for War Birds until the FSCASP is resolved. Jerry Kirby seconded the motion. The motion passed unanimously.” [FAA Exhibit 1, Item 19, exhibit 17, p. 2]

The June 2002 SCRAA meeting minutes re-visit the issue of the Authority’s lease to the Complainant for space in the terminal building:

“There was discussion of renting a room in the terminal for Warbirds. The Authority considered the square footage of the room and the present rental rates. Steve Sudberry made a motion to give Ms. Moore a three lease [sic] at \$175 monthly. David Blankenship seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 19, exhibit 25, p. 2]

The August 2002 SCRAA meeting minutes note the selection of a new full service CASP. It states, “the Authority welcomes Damian and Mary Weber as our new CASP.” [FAA Exhibit 1, Item 19, exhibit 26, p. 1]

There was also a discussion regarding the status of the Complainant’s leasing arrangement with the Respondent:

“There was discussion of the space leased to War birds’[sic]. Ms. Moore has not signed the contract. Art McClellan made a motion to give Ms. Moore ten days to sign the contract. Wayne Hooper seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 19, exhibit 26, p. 2]

This issue was resolved as the September 2002 SCRAA meeting minutes state, “Warbirds has signed the lease.” [FAA Exhibit 1, Item 19, exhibit 27, p. 1]

In her response to a Request for Additional Information, the Complainant implies she began leasing a 60 foot by 80 foot hangar from Wilson Family Partnership in 2003. [FAA Exhibit 1, Item 19, p. 6 and p. 16] Wilson Family Partnership entered into a lease agreement with the SCRAA to build the hangar on March 8, 1999. [FAA Exhibit 1, Item 18, exhibit 9] This lease agreement allows Wilson Family Partnership to sublease the hangar to a third party acceptable to the SCRAA. [FAA Exhibit 1, Item 18, exhibit 9] The Record contains only one executed lease agreement between the Complainant and Wilson Family Partnership for the 2006 calendar year. [FAA Exhibit 1, Item 19, exhibit 19, p. 2]

During the November 22, 2004 meeting of the SCRAA, a complaint was made about the Complainant's parking of a mobile home on the Airport. The minutes state:

“Roger Richardson expressed a complaint concerning Gina Moore parking a mobile home on the north end and blocking the area for other hangar owners. Randy Leath made a motion to notify Gina Moore by mail that she is not complying with the minimum standards by parking vehicles on the airport. A copy of the minimum standards Chapter 1, Section 8 and Chapter 2, Section 2, Articles A, B and C, should be included with the letter. Bill Sudekum seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 1, exhibit 17, p.1]

The Record contains an unsigned letter dated November 28, 2004, from the Respondent with a signature line for Sam Garrett,⁸ notifying the Complainant of violations of the Authority's Minimum Standards.⁹ [FAA Exhibit 1, Item 1, exhibit 8]

On January 15, 2005, the SCRAA sent a letter to Warbird SkyVentures stating:

“Warbirds have given permission to park there [sic] motor home behind the hangar she rents, as long as the general public can pass without any problems.

Under no circumstances, should the motor home block the access to any hangar at any time.” [FAA Exhibit 1, Item 19, exhibit 24]

At the January 24, 2005 meeting of the SCRAA, a statement was made by Airport Manager Sam Garrett that the Complainant was “notified of problems”. [FAA Exhibit 1, Item 1, exhibit 18, p. 2]

⁸ In some parts of the Record, Sam Garrett is described as the Airport Manager. In other parts of the Record, Sam Garrett is described as an employee or representative of the Complainant, Warbird SkyVentures, Inc.,. It appears that he was employed as the Airport Manager before he was employed by Warbird SkyVentures.

⁹ The Complainant also provides a document signed by Sam Garrett stating, “In the documentation provided by SCRAA to Brian Caldwell [Chief Planner, Tennessee Department of Transportation, Aeronautics Division] included a letter dated November 28, 2004 written to Gina Moore with my name at the bottom was not written or signed by me [sic]. I did not write, type or authorize anyone to write a letter on my behalf. In addition this letter is not on the SCRAA letterhead and has been recently produced.” [FAA Exhibit 1, Item 1, exhibit 25] Another document in the Record further confuses this issue. The Complainant provides a statement signed by Sam Garrett on November 20, 2007 stating:

“As Airport Manager, I gave Ms. Moore permission to park her motor home on the runway side of the hangar for 48 hours as per the minimum standards. Also she had permission to park her motor home on the west side of her hangar for extended periods of times... As Airport Manager, I Have [sic] never witnessed Ms. Moore's aircraft parked in the object free zone overnight.” [FAA Exhibit 1, Item 1, exhibit 26]

In the October 23, 2006 meeting of the SCRAA, it was stated a third complaint had been received concerning the Complainant's plane obstructing other aircraft on the taxiway and not being tied down. A motion was made to authorize the Chairman to send "a third and final warning" to the Complainant to follow the minimum standards and outlining regulations she was not following. [FAA Exhibit 1, Item 1, exhibit 19, pp 1-2]

On January 3, 2007, Wilson Family Partnership offers the Complainant an addendum to maintenance portion to lease and an extension of the existing lease. A lease term for the 2007 calendar year was proposed. [FAA Exhibit 1, Item 1, exhibit 7] The Complainant proposed changes to the agreement, but never executed it. [FAA Exhibit 1, Item 1, p. 3]

At the January 8, 2007 meeting of the SCRAA, concerns about the Complainant were discussed. The minutes state:

"Damian wants to lease the new hangar. It was pointed out that Gina Moore continues to park her motorhome in front of the door on the runway side obstructing passage of aircraft on the taxiway. A letter has been sent to Ms. Moore not to park the motorhome on the runway side of the hangar. Ms. Moore also has two dogs which are not leashed and are presenting problems. David Blankenship made a motion for Steve Sudbury to write Ms. Moore a letter indicating we have previously sent correspondence requesting she refrain from parking on the taxiway and blocking traffic. If the vehicle continues to be in violation of airport standards we will have to have it towed. Charlie Moore seconded the motion which passed unanimously." [FAA Exhibit 1, Item 1, exhibit 20, pp 1-2]

In the February 26, 2007 meeting of the SCRAA, Sam Garrett, now representing the Complainant as her agent/employee, requested to establish a warbird and other Aircraft Maintenance CASP in the Complainant's hangar. It was stated the Complainant had secured the required licensed mechanics and insurance. The Authority requested documentation be produced to prove insurance and qualified mechanics, and Sam Garrett agreed to deliver those documents the next day.¹⁰ The Authority discussed previous apron problems with the Complainant's operation and specified that future operations must not block taxiways or aprons. Per the meeting minutes, it was decided that the full service CASP, Jet Harbor, would lease additional parking spaces to the Complainant for storage of her aircraft. The Authority voted to approve the Complainant's request for an Aircraft Maintenance CASP, with the required documentation. [FAA Exhibit 1, Item 1, exhibit 21, p.1]

In March of 2007, the airport management called Warbird SkyVentures and requested the motor home be moved. These telephone conversations are documented by the Complainant, her employee, and the March 26, 2007 SCRAA meeting minutes. [FAA Exhibit 1, Item 1, pp 8-9, FAA Exhibit 1, Item 1, exhibit 28, and FAA Exhibit 1, Item 1, exhibit 22, p. 2]

In the March 26, 2007 meeting of the SCRAA, the authority reviewed the Complainant's request to establish a warbird and other Aircraft Maintenance CASP from the previous meeting. During this meeting, the manager of Jet Harbor presented a handout highlighting parts of the Minimum Standards that would be violated if the Complainant was given a CASP. The FBO manager cited a concern regarding insurance coverage and the Complainant's continued parking of her motor home in front of her hangar. The minutes state:

¹⁰ The Record is unclear as to whether or not this documentation was ever provided from the Complainant to the SCRAA.

“After review of the minimum standards and requirements, Rich Coker made a motion to rescind the previous motion passed by the Authority concerning Ms. Moore’s request for a CASP. The Authority was mistaken when the previous motion was passed. David Blankenship seconded the motion which passed unanimously. Mr. Coker also made a motion that if Ms. Moore is still interested in the future to extend to a CASP she should work out an agreement prior to presenting to the Authority. Bill Sudekum seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 1, exhibit 22, p. 2]

In another discussion related to the Complainant, an Authority member reminded those in attendance of the motion made at the January meeting to send a letter to the Complainant requesting she refrain from parking on the taxiway and blocking traffic. It was then pointed out that the Complainant did not have a signed lease which is required for a CASP agreement. The minutes further state, “Charlie Moore made a motion that the Authority confer with the owner of the hangar outlining all the issues concerning the Authority. Rich Coker seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 1, exhibit 22, p. 2]

On March 31, 2007, the SCRAA wrote a letter to the Complainant’s landlord, Wilson Family Partnership, regarding concerns with their subtenant, the Complainant. The SCRAA cited concerns with parking of a motor home, parking of aircraft, dogs running loose on airport property and the Complainant’s unresponsiveness to the SCRAA’s previous requests. The SCRAA also reminded Wilson Family Partnership that the Authority must approve all subleases. [FAA Exhibit 1, Item 1, exhibit 5]

On May 4, 2007¹¹, Wilson Family Partnership executed a lease termination letter to the Complainant, requesting she vacate the premises by May 5, 2007. The letter states:

“As owner (Wilson Family Partnership, LP) of the aircraft hangar located at 1475 Airport Road, Gallatin Tn. 37066 we delivered a lease to you (Warbird Ventures) with an addendum on January 03, 2007 date [sic] and you have not signed or responded/returned the lease or the addendum; therefore, your lease offer is off of the table and no longer valid.

You are currently a holdover tenant and our lease clearly states that a hold over tenant is a month to month agreement.

This is your 30 day notice to vacate as we have rescinded our lease offer and we have no intentions of continuing to rent you. If you have not vacated the property after 30 days, we will seek a detainer action to have you removed.

In addition please reference the attached letter detailing some of the airport authority violations.

We have discussed these issues with you on numerous occasions and will not tolerate your non-compliance. Your inappropriate behavior has contributed significantly to your eviction notice.” [FAA Exhibit 1, Item 1, exhibit 6]

¹¹ The lease termination letter submitted by the Complainant and identified in the Administrative Record as FAA Exhibit 1, Item 1, exhibit 6 is dated May 4, 2007. However, the Complainant states, “Todd Wilson post-dated his signature.” [FAA Exhibit 1, Item 1, p. 9] The Director believes the Complainant may have received this letter as early as April 5, 2007, prior to contacting the Tennessee Department of Transportation; however, the Record is unclear.

On May 3, 2007, the Complainant contacted the Tennessee Department of Transportation regarding her request to open an aircraft maintenance shop and her eviction from the Sumner County Regional Airport. [FAA Exhibit 1, Item 1, exhibit 1] On May 16, 2007, the Complainant submitted a follow-up to her May 3, email and requested the Tennessee Department of Transportation help mediate her dispute with the Airport. [FAA Exhibit 1, Item 1, exhibit 2]

The state reviewed the Complainant's following allegations:

- Sumner County Airport Authority violated the Complainant's Right to Privacy;
- Sumner County Airport Authority violated the Complainant's Right to Due Process; and
- Sumner County Airport Authority violated the Complainant's Right to Equal Protection Under the Law.

Additionally, the Complainant alleged the Airport Authority's actions constituted a violation of Grant Assurance # 30, *Civil Rights*. [FAA Exhibit 1, Item 1, exhibit 4, p. 1]

On July 3, 2007, the Tennessee Department of Transportation issued their findings on the informal investigation requested by the Complainant. The Findings dispute the Complainant's claim that insurance requirements were unreasonable, note the Complainant's violation of the Airport's Minimum Standards, and discuss the lack of specific evidence necessary to document a violation of the Complainant's Civil Rights. In summary, the Tennessee Department of Transportation described the SCRAA as operating consistently with their Federal obligations, and through mediation efforts, it appeared the sponsor was willing to discuss forming a new CASP if suitable space was available for the Complainant. [FAA Exhibit 1, Item 1, exhibit 4 and FAA Exhibit 1, Item 5 Exhibit B]

Procedural History

On November 26, 2007, FAA received the Complaint. [FAA Exhibit 1, Item 1]

On December 3, 2007, FAA docketed Warbird Sky Ventures v. Sumner County Regional Airport Authority. [FAA Exhibit 1, Item 2]

On December 10, 2007, FAA amended the notice of docketing. [FAA Exhibit 1, Item 3]

On December 18, 2007, the Notice of Appearance for the Respondent was filed. [FAA Exhibit 1, Item 4]

On December 26, 2007, the Respondent filed an Answer and Motion to Dismiss [FAA Exhibit 1, Item 5] and Brief in Support of Motion to Dismiss. [FAA Exhibit 1, Items 5 & 6]

On December 31, 2007, the Complainant replied. [FAA Exhibit 1, Item 7]

On January 9, 2008, the Respondent submitted its answer in rebuttal. [FAA Exhibit 1, Item 8]

On January 28, 2008, the Respondent made a Request for Admissions and Production of Documents to Complainant. [FAA Exhibit 1, Item 10]

On February 5, 2008, the FAA dismissed the Respondent's Request for Admissions and Production of Documents and notified the Complainant and Respondent the time for submittal of pleadings had closed and the FAA was undertaking its investigation. [FAA Exhibit 1, Item 11]

On April 11, 2008, the Complainant submitted a Motion to Review Additional Facts. [FAA Exhibit 1, Item 12]

On June 6, 2008, the FAA extended the due date of the Director's Determination to on or before August 22, 2008. [FAA Exhibit 1, Item 15]

On August 22, 2008, the FAA extended the due date of the Director's Determination to on or before September 26, 2008. [FAA Exhibit 1, Item 16]

On October 3, 2008 the FAA requested additional information from the SCRAA. The FAA also extended the due date of the Director's Determination to on or before December 31, 2008. [FAA Exhibit 1, Item 17]

On November 12, 2008, the SCRAA responded to the FAA's questions. [FAA Exhibit 1 Item18]

On November 12, 2008, the Complainant responded to the FAA's questions. [FAA Exhibit 1 Item 19]

On January 8, 2009, the FAA extended the due date of the Director's Determination to on or before February 27, 2009. [FAA Exhibit 1, Item 20]

IV. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, summarized above, the FAA has determined that the following issues require analysis in order to provide a complete review of the SCRAA's compliance with applicable Federal law and policy:

- Whether the Respondent applied the Airport's Minimum Standards in a way to unjustly discriminate against the Complainant, and is in violation of 49 U.S.C. § 47107(a)(1), and Federal Grant Assurance 22, *Economic Nondiscrimination*, (h).
- Whether the Respondent's failure to grant the Complainant an agreement to operate an aeronautical service constitutes an unreasonable denial of access in violation of 49 U.S.C. § 47107(a)(1), and Grant Assurance 22, *Economic Nondiscrimination*, (a).
- Whether the Respondent has limited the provision of specific aeronautical services at the Airport to a single provider, and is in violation of 49 U.S.C. § 47107(a)(4), and Grant Assurance 23, *Exclusive Rights*.
- Whether the Respondent's processes and procedures for reviewing the Complainant's request to provide an aeronautical service at the Airport ceded its rights and powers in violation of 49 U.S.C. § 47107(a) and Grant Assurance 5, *Preserving Rights and Powers*.

FAA's decision in this matter is based on the applicable Federal law and FAA policy, review of the arguments and supporting documentation submitted by the parties and reviewed by the FAA, which comprises the Administrative Record reflected in the attached FAA Exhibit 1.

V. APPLICABLE LAW AND POLICY

The Federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing Federal funds and other assistance to local communities for the development of

airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public fair and reasonable access to the airport.

The following is a discussion pertaining to the Airport Improvement Program, Airport Sponsor Assurances, the FAA Airport Compliance Program, and enforcement of Airport Sponsor Assurances.

The Airport Improvement Program

Title 49 U.S.C. § 47101, *et seq.*, provides for Federal airport financial assistance for the development of public-use airports under the Airport Improvement Program (AIP) established by the Airport and Airway Improvement Act of 1982, as amended. Title 49 U.S.C. § 47107, *et seq.*, sets forth assurances to which an airport sponsor agrees as a condition of receiving federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the Airport Improvement Program, 49 U.S.C. § 47107, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C. § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.¹² FAA Order 5190.6A, *Airport Compliance Requirements* (Order), issued on October 2, 1989, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with Federal obligations of airport sponsors. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Three Federal grant assurances apply to the circumstances set forth in this Complaint: (1) Grant Assurance 5, *Preserving Rights and Powers*, (2) Grant Assurance 22, *Economic Nondiscrimination*; (3) Grant Assurance 23, *Exclusive Rights*.

Grant Assurance 5, *Preserving Rights and Powers*

Grant Assurance 5, *Preserving Rights and Powers*, implements the provisions of Title 49 U.S.C. 47107, and requires, in pertinent part, that the sponsor of a federally obligated airport

“...will not take or permit any action which would operate to derive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which

¹² See, e.g., the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C. §§ 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.”

The Order describes the responsibilities under Grant Assurance 5 assumed by the owners of public-use airports developed with Federal assistance. Among these is the responsibility for enforcing adequate rules, regulations, or ordinances as are necessary to ensure the safe and efficient operation of the airport. [See FAA Order 5190.6A, Sec. 4-7 & 4-8.]

Assurance 22, *Economic Nondiscrimination*

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. Federal Grant Assurance 22, *Economic Nondiscrimination* deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access. Grant Assurance 22 of the prescribed sponsor assurances implements the provisions of 49 U.S.C. § 47107(a)(1) through (6), and requires, in pertinent part:

“...will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport. [(a)]

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and*
- (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.*

c. Each fixed-base operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and utilizing the same or similar facilities.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.”

Subsection (h) qualifies subsection (a), and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public.

In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of such restrictions when those restrictions deny or limit access to, or use of, the airport. [FAA Order 5190.6A, Section 4-8]

The Order describes the responsibilities under Assurance 22 assumed by the owners or sponsor of public use airports developed with federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. [*See* Order, Par. 4-14(a) (2) and 3-1]

The owner of an airport developed with Federal assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination. [*See* Order, Par. 4-13(a)]

Assurance 23, *Exclusive Rights*

Title 49 U.S.C. § 40103(e), provides, in relevant part, that “there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended.”

Title 49 U.S.C. § 47107(a)(4), similarly provides, in pertinent part, that “there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”

Grant Assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances implements both statutory provisions requiring, in pertinent part, that the sponsor of a federally obligated airport:

“...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public...and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982.”

An exclusive right is defined as a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right. [*See* FAA Advisory Circular 5190-6 *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities*, January 4, 2007].

Therefore, it is FAA’s policy that the sponsor of a federally obligated airport will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public and will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities. The Order clarifies the applicability, extent, and duration of the prohibition against exclusive rights under 49 U.S.C. § 40103(e) with regard to airports developed with FAA-administered grant assistance and Federal property conveyances.

The exclusive rights prohibition remains in effect as long as the airport is operated as an airport. FAA takes the position that the grant of an exclusive right for the conduct of any aeronautical activity on such airports is regarded as contrary to the requirements of the applicable laws, whether such exclusive right results from an express agreement, from the imposition of unreasonable standards or requirements, or by any other means.

The FAA Airport Compliance Program

The FAA discharges its responsibilities for ensuring airport owners' compliance with their federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations an airport owner accepts when receiving federal grant funds or the transfer of federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' federal obligations and the public's investment in civil aviation.

The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of federal property to ensure that the public interest is being served. The Order sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes the policies and procedures to be followed by FAA personnel in carrying out the FAA's responsibilities for ensuring airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition of receiving a grant of federal funds or the conveyance of federal property for airport purposes. The Order analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of those assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The FAA Compliance program is designed to achieve voluntary compliance with federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination as to whether an airport sponsor is *currently* in compliance with the applicable federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of applicable federal obligation to be grounds for dismissal of such allegations. [*See e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority*, FAA Docket No. 16-99-10 (August 30, 2001) (Final Decision and Order), affirmed in *Wilson v. FAA* 372 F.3d 806 (6th Cir. 2004)]

The Order outlines the standard for compliance, stating, "It is the FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating regulations, etc.) is in place which in the FAA's judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out." [Order, Sec 5-6(a)(2)]

Enforcement of Airport Sponsor Assurances

The Federal Aviation Act of 1958, as amended (FAAct), 49. U.S.C. § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport owner or sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport owners or

sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their federal grant assurances.

FAA Order 5190.6A, *Airport Compliance Requirements*, dated October 2, 1989, covers all aspects of the airport compliance program except enforcement procedures.

Enforcement procedures regarding airport compliance matters may be found at *FAA Rules of Practice for Federally Assisted Airport Enforcement Proceedings* (14 CFR Part 16). These enforcement procedures were published in the Federal Register (61 FR 53998, October 16, 1996) and became effective on December 16, 1996.

VI. ANALYSIS AND DISCUSSION

As noted in Section I above, the initial Complaint imprecisely alleged violations of the Respondent's federal obligations and cited to an incorrect/inapplicable Federal Grant Assurance. The incorrect citation to a violation of 49 U.S.C. § 47107(b) related to written assurances on the use of airport revenue; nothing in the Complaint, its associated evidence, nor subsequent filings explained or supported this claim. [FAA Exhibit 1, Item 1, p. 3] In an effort to be fully responsive to the Complainant, the Director will catalogue the grant assurance violations alleged by the Complainant throughout the Part 16 process and dispose of those allegations not directly related to the issues identified for FAA analysis and decision.

Allegations Outside the Part 16 Purview

The Complainant states:

“Sumner County Airport Authority violated my Civil Rights; my Right to Due Process, my Right to Privacy, my Right to Equal Protection Under the Law, my Right to Face my Accusers. They have slandered my name in our newspaper, and they have smeared my name with respect to the other tenants of the airport. They have performed these acts through false statements, basic lies, and manipulation. The Sumner County Airport Authority held me and my flying service to Minimum Standards set forth for a Full Service CASP. The Sumner County Airport Authority is in violation of its own Minimum Standards.” [FAA Exhibit 1, Item 1, p. 1]

The Complainant asserts the Respondent violated her civil rights. Federal Grant Assurance 30, *Civil Rights*, prohibits an airport sponsor from excluding an aeronautical user based on the grounds of race, creed, color, national origin, sex, age, or handicap. The statement above is the Complainant's only mention of this alleged violation; none of the evidence submitted by the Complainant further states this allegation, nor does she provide any evidence with how her race, creed, color, national origin, sex, age, or handicap has resulted in disparate treatment. As stated in Section I, allegations of violations of Due Process, Right to Privacy, Equal Protection, Right to Face Accusers, and Slander are outside the jurisdiction of 14 CFR Part 16.¹³

The FAA's administrative complaint process for matters pertaining to federally assisted airports is not the proper forum for review of the Complainant's claims of violations of constitutional, state, or local laws.

¹³ Accusations of slander, or malicious, false, and defamatory statements, are heard in civil and/or criminal courts, not by a federal agency such as the FAA. Once again, Part 16 is not the appropriate forum for this dispute and the Director declines to make a finding in reference to this allegation.

Under 14 CFR Part 16.1, the FAA’s jurisdiction is specifically limited to proceedings involving complaints against federally assisted airports arising under legal authority including portions of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, et seq.; the Airport and Airway Improvement Act (AAIA) of 1982, as amended and recodified at 49 U.S.C. § 47107, et seq.; the Surplus Property Act, as amended, 49 U.S.C. § 47151, et seq.; predecessors to those Acts; and regulations, grant agreements, and documents of conveyance, pursuant to those Acts.

We disagree with the Complainant’s assertion that Part 16 is an appropriate forum for alleged violations of constitutional law. The FAA previously addressed this issue in its initial determination of Martin v. City of Prescott, AZ, FAA Docket No. 16-97-01 (June 23, 1997) (Director’s Determination), “Because of the jurisdictional limitations of 14 C.F.R. 16, it would not be appropriate for the FAA . . . to include a determination of whether or not the Aircraft Storage Facility Agreement violates the Fourteenth Amendment of the United States Constitution. . . .” On appeal, the FAA Associate Administrator for Airports affirmed the FAA’s initial determination of Martin v. City of Prescott, concluding, among other things, “. . . it is the courts, not the FAA, a federal agency, that is the appropriate forum for . . . constitutional claims.” [Prescott, 16-97-01 (October 7, 1997) (Final Agency Decision and Order)] Therefore, the Director declines to make a finding in reference to this allegation.

The Complainant states:

“*Sumner County Airport Authority violated 49 USC 47107b.*” [FAA Exhibit 1, Item 1, p. 3]

Title 49 U.S.C. § 47107(b) discusses the written assurances related to airport revenue. This requirement is embodied in Federal Grant Assurance 25, *Airport Revenues*. The Complainant fails to explain or substantiate this claim. The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedure Act (APA) and federal case law. The APA provision states, “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” [5 U.S.C. § 556(d).] [*See also, Director, Office of Worker’s Compensation Programs, Department of Labor v. Greenwich Collieries*, 512 US 267, 272 (1994); *Air Canada et al. v. Department of Transportation*, 148 F3d 1142, 1155 (DC Cir, 1998).] Title 14 CFR § 16.29 is consistent with 14 CFR § 16.23, which requires that the complainant must submit all documents when available to support his or her complaint. Similarly, 14 CFR § 16.29 states that “[e]ach party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance.” Therefore, the Director declines to make a finding in reference to this allegation.

In the Reply, the Complainant alleges:

“*The Sumner County Regional Airport Authority Violated C.I. General Federal Requirements Page 1[.]*” [FAA Exhibit 1, Item 7, p. 1]

This general requirement under the heading of “Sponsor Certification” requires an airport sponsor to assure and certify that it will, “comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal Funds for this project including but not limited to. . .” 24 different federal laws.

The Complainant fails to explain how the acceptance of a Federal grant has resulted in the violation of any Federal law. For the reasons cited above, the Director declines to make a finding in reference to this allegation.

The Complainant alleges:

“The Sumner County Regional Airport Authority Violated C.2. Responsibility and Authority of the Sponsor (a) Public Agency Sponsor[.]” [FAA Exhibit 1, Item 7, p. 1]

This grant assurance requires a public agency airport sponsor to demonstrate it “has the legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant’s governing body authorizing the filing of the application...” This grant assurance is applicable to airport sponsors as defined at 49 U.S.C. § 47102 (24)(a) and applicable to grant applicants pursuant to 47106(a)(5).

The Complainant makes this allegation in response to the Respondent’s Motion to Dismiss which states “Respondent is not properly named in that the quasi-governmental board established pursuant to T.C.A. §42-3-103(a) is the SUMNER COUNTY REGIONAL AIRPORT AUTHORITY and not Sumner County Airport Authority.”¹⁴ [FAA Exhibit 1, Item 5, p. 1]

Part 16 is not the proper forum for alleged violations of state law. Moreover, the Director affirms that Sumner County adopted a resolution creating the Airport Authority on November 16, 1981, and the Authority was duly incorporated on November 27, 1981. [FAA Exhibit 1, Item 21] In 1986, the Sumner County Commission adopted a resolution designating the airport authority’s name as “The Sumner County Regional Airport Authority. [FAA Exhibit 1, Item 21, p. 11] The FAA identified the Airport Authority as the Respondent in its Notice and Amended Notice. [FAA Exhibit 1 Items 2 and 3]

The Director declines to make a finding in reference to this allegation. Moreover, the Respondent accepted service on behalf of the Sumner County Airport Authority and as such, this does not constitute grounds for dismissal under 14 CFR § 16.25.

The Complainant alleges:

“The Sumner County Regional Airport Authority Violated C. 26. Reports and Inspections (a)[.]” [FAA Exhibit 1, Item 7, p. 3]

Grant Assurance 26, *Reports and Inspections*, requires an airport sponsor to “submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary.”

The Complainant fails to explain this allegation. The Director is aware of the Complainant’s attempts to obtain copies of the SCRAA’s meeting minutes and other governing documents. [FAA Exhibit 1, Item 7, exhibits 12 -15]

Recognizing the importance of access to records, in this instance the Complainant had an appropriate remedy for access to documents it contends were in the possession of the Respondent via a Motion.¹⁵ The Complainant could have filed a Motion seeking an order from the Director to compel the Respondent

¹⁴ The Director notes that the 2007 Certificate of Insurance for the Respondent’s lease with Flight Solutions, names Sumner County Airport Authority as the additional insured, not the Sumner County Regional Airport Authority.

¹⁵ 14 CFR § 16.19 allows for an application for an order or ruling not otherwise specifically provided for in this part to be made by motion.

to produce documents it deemed necessary to support her claim for consideration during the investigation phase of the Part 16 proceeding. The Complainant did not submit a Motion to the Director requesting production of such documents.

However, these documents are not required by the Secretary, nor are they financial in nature. Therefore, the Director declines to make a finding in reference to this allegation.¹⁶

The Complainant alleges:

“The Sumner County Regional Airport Authority violated Tennessee Codes TCA 42-3-104, TCA 42-3-105, TCA 42-3-106, and most recently TCA 10-7-503.” [FAA Exhibit 1, Item 7, p. 3]

The FAA’s administrative complaint process for matters pertaining to federally assisted airports is not the proper forum for review of the Complainant’s claims of violations of state laws.¹⁷ The Director declines to make a finding in reference to this allegation.

The Complainant alleges:

“The Sumner County Airport Authority is in violation of Article III, United States Constitution when they decided not to allow me to ‘see reports and background papers, and any records of decisions made by the County Council...’.” [FAA Exhibit 1, Item 7, p. 9]

Again, Part 16 is not an appropriate forum for alleged violations of constitutional law. The principal matter to be determined by the FAA is whether or not the airport sponsor is in compliance with its Federal obligations as embodied in its Federal grant agreements. The Director declines to make a finding in reference to this allegation.

The Complainant has also alleged violations of FAA Order 5190.6A, *Airport Compliance Requirements*. While this Order is useful in helping airport sponsors interpret their obligations under the FAA’s Airport Compliance Program, it is not controlling with regard to airport sponsor conduct. The Order sets forth policies and procedures for FAA personnel to follow in carrying out the FAA’s responsibilities for ensuring airport compliance. As a result, these allegations will be analyzed only when used in direct support of a grant assurance violation.

The Complainant alleges:

¹⁶ The Director is aware of Petition NO. 2008C-82 filed by the Complainant in the Chancery Court for Sumner County, Tennessee at Gallatin and the Order issued by Chancellor Tom E. Gray on October 16, 2008. The Findings of Fact and Order were submitted by the Respondent as FAA Exhibit 1, Item 18 exhibits 18 and 19. However, this matter is outside the purview of Part 16 and was not considered in the investigation of the issues raised in FAA Docket No. 16-07-16.

¹⁷ This is consistent with the position the FAA has taken on prior cases raising state law claims. *See Consolidated Services v. City of Palm Springs*, FAA Docket No. 16-03-05 (June 10, 2004) (Director’s Determination). *Boca Airport, Inc. v. Boca Raton Airport Authority*, FAA Docket No. 16-00-10 (April 26, 2001) (Director’s Determination), and *Morris Waller and M&M Transportation v. Wichita Airport Authority*, FAA Docket No. 16-98-13 (March 12, 1999) (Director’s Determination).

“Ann Wilson, Wilson Family Partnership was granted the right to sub-lease Corporate Hanger #3, as a Tenant of the airport, a service normally required at the airport. Ann Wilson did not allow me Due Process to address McClellan’s Exhibit 10. Instead she chose to end my Tenancy by writing me a letter of eviction resulting in violating Order 5190.6A.” [FAA Exhibit 1, Item 19, p. 7]

Wilson Family Partnership, as the owner of a hangar available for sublease at the Airport, is not bound by the procedural guidance contained in the Order. The Respondent is responsible for the acts of its tenants and could be subject to challenges related to the tenant’s denial of access to a subtenant in contravention of its grant assurance obligations.¹⁸

As a result, any allegations relating to denial of access through the Complainant’s eviction from the hangar subleased by Wilson Family Partnership are considered a landlord-tenant dispute and remain outside this Part 16 Determination.¹⁹

Respondent’s Motion to Dismiss is Denied

Throughout the Record, the Respondent declines to directly address the allegations made by the Complainant. Rather than disputing the claims made against the SCRAA, the Respondent moved to dismiss the Complaint on the following grounds: it did not identify the assurance violated, the Complainant had not filed an application to conduct any business at the Airport, the Complainant’s previous agreement to conduct business at the Airport had expired, the Respondent was not properly named, and the Complainant had not sought to address the issues with the Respondent directly. [FAA Exhibit 1, Item 5]. Additionally, the Respondent argued that the Complainant lacked standing to bring the Complaint. [FAA Exhibit 1, Item 6]

Although the Respondent directly addressed the issues raised by the Complainant during the mediation conducted by the Tennessee Department of Transportation, it has chosen not do so in this proceeding. While the Complaint is imprecise in its allegations of the grant assurances violated, the circumstances she describes clearly relate to the fundamental bases of the Federal Grant Assurance Obligations. Based on the pleadings, the FAA found a reasonable basis for further investigation.

In its Answer and Motion to Dismiss, the Respondent contends the Complainant has not properly applied to operate a CASP since her previous CASP agreement expired in June 2004. The Respondent states:

“None of the entities; to wit: Gina M. Moore, Old Airport Shop; Museum of Aviators; or Warbird Skyventures have ever filed an application with the Respondent to conduct any business at M-33;” [FAA Exhibit 1, Item 5, p. 1]

The Record notes the Complainant’s request to establish an aircraft maintenance and repair CASP as well as the Respondent’s consideration of the request. The minutes of the February 26, 2007 SCRAA meetings state:

“Sam Garret [sic] spoke on behalf of Jeana [sic] Moore and requested that the authority approve a request from Jeana [sic] Moore to establish a warbird and other aircraft

¹⁸ The FAA recommends that leases and sublease agreements include a subordination clause subordinating these tenant agreements to the agreements between the airport sponsor and the United States. However, even in cases such as this where the agreement did not contain such a subordination clause, the FAA will look to the airport sponsor to take the action necessary to comply with its federal obligations.

¹⁹ See Footnote 17.

maintenance facility CASP in her hangar. Sam stated that Jenna [sic] had the required licensed mechanics and insurance. The authority requested that the documentation be produced to prove insurance and qualified mechanics. Mr. Garrett said he would deliver those documents on Feb. 27, 2007. The authority discussed previous apron problems with the warbird operation and specified that no taxi ways [sic] or aprons would be blocked due to her maintenance CASP. Damian and Jet Harbor would lease parking spaces to Jenna for storage of her aircraft. With the required documentation, her request will be approved. The motion was voted on and carried.” [FAA Exhibit 1, Item 1, exhibit 21, p. 1 and FAA Exhibit 1, Item 18, exhibit 11 p. 1]

To better understand the SCRAA’s decision-making process with regards to the Complainant’s request, the Director requested the Respondent to provide a detailed explanation as to what transpired regarding the Complainant’s request for a proposed maintenance and repair CASP at this meeting. [FAA Exhibit 1, Item 17] The Respondent referred back to the minutes stating, “See, Exhibit 11, supra.” [FAA Exhibit 1, Item 18, p. 2] Therefore, the Director concludes that the Respondent approved the Complainant’s request predicated upon receiving the required documentation.

The Record does not indicate whether or not the Complainant provided the requested documentation to the airport manager or the SCRAA. When the Director requested copies of any written business plan or proposal for the Old Airplane Shop, the Respondent stated, “no such documents exist in that at no time has Gina Moore and/or her proposed business entities has filed any written application, written business plan, or written request to operate as a CASP on M-33.” [FAA Exhibit 1, Item 18, p. 2]

However, the lack of any written business proposal did not deter the Authority from revisiting the Complainant’s CASP request at its March 26, 2007 meeting. The minutes state:

“The Authority will review a motion made in the February meeting concerning Jenna [sic] Moore’s request to operate a CASP. The Authority will review and modify the request in keeping with the Minimum Standards of the SCRAA...

In his CASP report FBO²⁰ Damian Weber presented a handout highlighting parts of the Minimum Standards which will be violated if Ms. Moore is given a CASP. He cited page 26 C 1-7 and page 13 concerning insurance²¹. Ms. Moore continues to park her motor home in front of the hangar. The owners of the adjacent hangars do not condone Ms. Moore doing maintenance. Mr. Weber maintains the FBO needs competition but there is not enough room for her to operate a CASP at the present location...

“There was discussion of Ms. Moore’s request for a CASP. A comparison was made of insurance carried by Jenna [sic] Moore and Damian Weber. Ms. Moore is insured for \$1,000,000; Damian Weber is insured for \$3,000,000. She continues to park her motor

²⁰ A fixed-base operator (FBO) is a commercial entity providing aeronautical services such as fueling, maintenance, storage, ground and flight instruction, etc., to the public. (FAA Order 5190.6A, Appendix 5)

²¹ Both the Complainant and the Respondent submitted copies of the Sumner County Regional Airport Authority’s Airport Minimum Standards and Rules and Regulations. The references cited by Mr. Weber correspond to FAA Exhibit 1, Item 1, exhibit 32 as submitted by the Complainant. Page 26, Item C, 1-7 of the Minimum Standards pertains to minimum standards for Aircraft Maintenance and Repair, as noted above. However, page 13 of the Minimum Standards refers to minimum standards for fueling operations, and appears irrelevant in this case.

home near the hangar obstructing the use of the area. Derrick called to have her move her motor home. She stated they were preparing to leave town. After review of the minimum standards and requirements, Rich Coker made a motion to rescind the previous motion passed by the Authority concerning Ms. Moore's request for a CASP. The Authority was mistaken when the previous motion was passed. David Blankenship seconded the motion which passed unanimously. Mr. Coker also made a motion that if Ms. Moore is still interested in the future to extend to a CASP she should work out an agreement prior to presenting it to the Authority. Bill Sudekum seconded the motion which passed unanimously...

"Charlie Moore reminded the Authority of the letter the Authority requested Mr. Sudbury send Ms. Moore stating violations. A signed lease is required for an agreement. It was pointed out that Ms. Moore never signed her lease. Charlie Moore made a motion that the Authority confer with the owner of the hangar outlining all of the issues concerning the Authority. Rich Coker seconded the motion which passed unanimously." [FAA Exhibit 1, Item 1, exhibit 22 and FAA Exhibit 1, Item 18 exhibit 12]

To better understand the SCRAA's decision-making process with regards to the Complainant's request, the Director requested the Respondent to provide a detailed explanation as to what transpired regarding the Complainant's sublease tenancy and potential CASP tenancy at the Airport during this meeting. [FAA Exhibit 1, Item 17] The Respondent referred back to the minutes stating, "See, Exhibit 12, attached hereto." [FAA Exhibit 1, Item 18, p. 2] Therefore, the Director concludes that the SCRAA rescinded its motion from the February meeting which approved the Complainant's request predicated upon receiving the required documentation. As such, the Respondent's claim that the Complainant did not make an application to conduct business at the Airport is without merit.

The Director makes this conclusion regarding the SCRAA's action based on the Respondent's reliance of its minutes as evidence in this proceeding and the Complainant's previous request to modify her CASP. The Minutes of the January 28, 2002 SCRAA meeting state:

"Warbirds Air Ventures asked for modifications to the CASP including tail dragger instruction, checkouts, signoffs and rental. David Blankenship made a motion to amend modify [sic] the CASP and accept the request. Jerry Kirby seconded the motion. The motion passed unanimously." [FAA Exhibit 1, Item 19, exhibit 13, p. 1]

Although these additional aeronautical services were never documented on the CASP agreement executed between the Complainant and Respondent on June 26, 2001, the Record does not document any disputes arising from this arrangement. The Complainant states "since she already had a CASP agreement. [sic] the procedure was the same as when I requested to add my Aeronca Champ to my CASP." Based on this experience, the Complainant assumed a similar procedure would apply to her request for the maintenance and repair CASP. [FAA Exhibit 1, Item 19, p. 8]

The Record contains contradictory statements regarding the status of the Complainant's 2001 CASP agreement. In its Brief in Support of SCRAA's Motion to Dismiss, the Respondent states:

"Warbird SkyVentures, Inc is an existing entity and this entity did in fact engage in business on M33 and did pay minimal rent to SCRAA. However, that relationship ended on June 26, 2004 and Warbird has not engaged in any business activity with the SCRAA and has not paid rents or fees to the SCRAA since the expiration of its CASP Agreement."

“Subsequent to June 26, 2004, Warbird has operated off of M33 illegally and without compliance with the SCRAA’s “Minimum Standards.” For the past three (3) years, Warbird has not had an operating agreement with the SCRAA and it has paid no rent or fees. Thus Warbird does not have standing to bring the instant Complaint.” [FAA Exhibit 1, Item 6, p. 2]

The Record indicates Warbird AirVentures, Inc., executed a CASP agreement with the SCRAA on June 26, 2001. [FAA Exhibit 1, Item 1, exhibit 15.] The Agreement stated the terms of the contract were in effect for three years. Although the Respondent now asserts the Complainant has been operating illegally at the Airport since 2004, the Record contradicts this assertion. In response to the Tennessee Department of Transportation, Aeronautics Division’s informal dispute resolution follow up request and question “did it [CASP] expire during the course of the existing lease or sub-lease? If it did expire, how was it that she continued to operate without it being renewed?” The Respondent replied:

“She [Complainant] had a CASP for the flying portion only. It was not expired. It was valid as long as her lease was valid. It is my understanding that her lease had expired and was a month to month lease since December 2007. That was an acceptable arrangement for the airport authority.” [FAA Exhibit 1, Item 1, exhibit 16, p. 2.]

The Complainant requested the Tennessee Department of Transportation mediate this dispute. On July 3, 2007, the Tennessee Department of Aeronautics issued its findings. [FAA Exhibit 1, Item 1, exhibit 4 and FAA Exhibit 1, Item 5, Exhibit B] This satisfies the requirement for pre-complaint resolution under 14 CFR § 16.21.

On September 25, 2008, the Director requested additional information from the Respondent to supplement the Record. The Director notes that Respondent’s position regarding the Complainant’s allegations has changed since participating in the mediation conducted by the Tennessee Department of Transportation.

Lastly, the Director disagrees with the Respondent’s assertion with regards to the Complainant’s standing. The Record clearly establishes the Complainant is an aeronautical user of the Airport and was considered such by the Respondent through the duration of the Complainant’s month to month lease. Further, as discussed above, the Complainant was the proponent of a specific aeronautical development at the Airport for the intent of a commercial aeronautical service to the public. Such circumstances establish the Complainant is directly and substantially affected by the actions or inactions of the SCRAA in regard to the proposed commercial aeronautical business at the Airport. Therefore, Ms. Moore and Warbird SkyVentures have standing in this Part 16 proceeding.²²

Allegations Identified for Analysis and Discussion

Throughout the course of this Part 16 process, the Complainant has made numerous allegations of grant assurance violations. In some instances, the violation is simply cited and quoted. At other times, the Complaint lacks precision its explanation of the allegation. The FAA accepted this Complaint under 14 CFR Part 16 and thoroughly reviewed the evidence contained in the Record because the Complainant raised issues related to the Airport Authority’s obligations under its Federal grant agreements. To facilitate the Director’s analysis of the Complaint, the remaining allegations have been grouped into four issues for discussion. These issues reflect the substance of the allegations broadly presented by the Complainant throughout the Record as a whole. The principal matter to be determined by the FAA

²² See Martyn v. Port of Anacortes, FAA Docket No. 16-02-03, (April 14, 2003) (Director’s Determination).

remains consistent with Part 16: whether or not the airport sponsor is in compliance with its Federal obligations as embodied in its Federal grant agreements.

Issue 1: *Whether the Respondent applied the airport’s Minimum Standards in a way to unjustly discriminate against the Complainant, and is in violation of 49 U.S.C. § 47107(a)(1), and Federal Grant Assurance 22, Economic Nondiscrimination, (h).*

The Complainant states:

“The Sumner County Airport Authority held me and my flying service to Minimum Standards set forth for a Full Service CASP.” [FAA Exhibit 1, Item 1, p. 1.]

Although the Complainant alleges the SCRAA has unjustly discriminated against its “flying service,” the Director will also address the treatment of the Complainant’s request to expand its activities on the airfield to include aircraft maintenance and repair.

The CASP Minimum Standards set forth in the SCRAA Airport Minimum Standards and Rules and Regulations dated March 24, 1999 (the Minimum Standards), state:

“No person shall use the Airport as a CASP until such person has executed a lease agreement approved by the Authority. The CASP must meet the qualifications, standards and requirements of these regulations and standards, pay any required fees, and receive approval from the Authority. As appropriate, the Authority will accept requests to combine space from individual specialty CASP’s [sic] who provide more than one commercial aeronautical activity. CASP’s [sic] desiring to provide retail aviation fuel and oil sales are required to comply with Section 10 of this chapter entitled Full-Service CASP’s [sic]. A CASP shall be a person who carries on or conducts one or more of the below-listed services at the Airport, meets the applicable minimum standards for each service provided, and adheres to general CASP regulations. All CASP’s [sic] shall carry such insurance coverage acceptable to the Authority and shall comply with all certification, notice of cancellation, additional insured requirements and other requirements or recommendations of the Authority.” [FAA Exhibit 1, Item 1, exhibit 32, p. 24-25 and FAA Exhibit 1, Item 5, Exhibit A, exhibit 2, p. 20]

SCRAA’s Treatment of the Flying Service CASP

First, the Director will address the SCRAA’s treatment of the Complainant’s barnstorming flying service. Since 2001, the SCRAA has required the Complainant to operate its barnstorming flying service in accordance with the Airport’s Minimum Standards. This includes entering into written lease agreements for the rental of space. [FAA Exhibit 1, Item 1, exhibit 12] Since 1999, three different FBOs have operated at the Airport, and the Complainant leased space through two of these FBOs. [FAA Exhibit 1, Item 19, p. 1-3] During her tenancy at Sumner County Regional Airport, the Complainant has also leased space from the Bankruptcy Court, the Sumner County Regional Airport Authority, and Wilson Family Partnership. [FAA Exhibit 1, Item 19, p. 6] The Complainant’s tenancy and lease history, as reflected in the Record, is outlined in Section III above.

The Director also notes that the Complainant successfully executed a CASP agreement with the SCRAA for her flying service on June 26, 2001. [FAA Exhibit 1, Item 1, exhibit 15] The Complainant is now contesting this agreement and states, “When I was presented with my CASP agreement [I] was not given the opportunity to read the agreement. I was told, ‘Sign in or leave’ by the Authority’s Lawyer.” [FAA Exhibit 1, Item 1, page 11] Elsewhere, the Complainant further notes, “If I was given the opportunity to

read this agreement before signing, I would not have signed. The SCRAA intruded into my private business, and they even state it in my CASP agreement.” [FAA Exhibit 1, Item 1, page 5]

The duration of the June 26, 2001 CASP agreement remains at issue. During the informal dispute resolution conducted by the Tennessee Department of Transportation, the Respondent described this CASP as “not expired” and “valid as long as her lease was valid.” [FAA Exhibit 1, Item 1, exhibit 16, p. 2.] However, the Respondent’s Motion to Dismiss states the CASP “Agreement terminated on June 26, 2004.” [FAA Exhibit 1, Item 5, p. 1]

In Adventure Aviation v. City of Las Cruces, NM, the Associate Administrator in the Final Agency Decision notes, “absent any evidence to demonstrate that the Complainant objected to the terms of the lease or was denied access to pertinent information during negotiations, there can be no unjust discrimination.” [FAA Docket No. 16-01-14 (September 15, 2003) (Final Agency Decision and Order, p. 24)] The Complainant’s objections to the CASP agreement, asserted long after its execution, do not negate the executed agreement, nor do they demonstrate treatment that is unjustly discriminatory.

The Complainant does not allege that the Respondent required her to provide fuel or meet any other requirements associated with full service CASPs contained in the SCRAA Airport Minimum Standards and Rules and Regulations. As such, the Director finds that the Respondent did not apply the airport’s Minimum Standards in a way to unjustly discriminate against the Complainant’s flying service.

SCRAA’s Treatment of the Request for an Aircraft Maintenance and Repair CASP

The SCRAA’s March 2007 meeting minutes note that concerns regarding the Complainant’s ability to comply with the Minimum Standards are raised by the FBO manager. However, this does not negate the Airport Authority’s responsibility to ensure that all entities proposing to engage in commercial aeronautical activities meet reasonable minimum standards. As FAA Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities* states, “the airport sponsor’s purpose in imposing standards is to ensure a safe, efficient and adequate level of operation and services is offered to the public. Such standards must be reasonable and not unjustly discriminatory. In exchange for the opportunity to engage in a commercial aeronautical activity, an aeronautical service provider engaged in an aeronautical activity agrees to comply with the minimum standards developed by the airport sponsor.”²³

The concerns raised in the February and March 2007 SCRAA meeting minutes relate to the Complainant’s ability to meet the Minimum Standards, operating as an aircraft maintenance and repair CASP. Specifically, these concerns are related to the requirements for insurance, adequate space for aircraft storage, an executed lease agreement approved by the Authority, and the Complainant’s historical use of common areas. At issue is whether or not the Respondent applied its Minimum Standards in a way to unjustly discriminate against the Complainant.

Regarding Aircraft Maintenance and Repair, the Minimum Standards state:

“Except as otherwise provided in any agreement between the CASP and the Authority, a CASP offering aircraft engine, airframe and accessory sales, maintenance and repair facilities to the public shall provide:

1. *In case of airframe and/or engine repairs, sufficient hangar space to house any aircraft upon which such service is being performed.*

²³ FAA Advisory Circular 150/5190-7, Minimum Standards for Commercial Aeronautical Activities, Section 1.1.

2. *Suitable storage space for aircraft awaiting repair, maintenance, or delivery.*
3. *Adequate enclosed shop space to house the equipment, tools, jacks, lifts and testing equipment to perform overhauls as required for FAA certification and repair of parts not needing replacement or common single-engine-land and light, multi-engine-land general aviation aircraft.*
4. *Sufficient FAA-certified mechanics with Inspection Authority for the work to be performed. At least two FAA-certified airframe and power plant mechanics available eight (8) hours per day, five (5) days per week, and on call at all other times available within two (2) hours.*
5. *Necessary equipment and personnel to promptly remove from the public landing areas (as soon as permitted by FAA, NTSB and other authorities) any disabled aircraft.*
6. *Adequate provisions for the removal/disposal of solutions, cleaning agents, lubricants and other wastes in compliance with Federal, State and County regulations.*
7. *Facilities for washing and cleaning aircraft meeting Environmental Protection Agency requirements for storm water discharge.”²⁴ [FAA Exhibit 1, Item 5, Exhibit A, exhibit 2, p. 22]*

Insurance Requirements

In reviewing the Minimum Standards, it is noted the CASP requirements do not specify minimum insurance coverage, but state the applicant must carry insurance coverage *acceptable* to the Authority. [FAA Exhibit 1, Item 5, Exhibit A, exhibit 2]

The Complainant states:

“I do not believe my insurance coverage is unreasonable. The Airport Minimum Standards does [sic] not give a specific dollar amount for insurance. I made an application for insurance through my current carrier of insurance based on projected gross revenue of \$300,000...In comparison to Jet Harbor, who works on airplanes valued more than 15 million, Jet Harbor does not carry enough insurance to cover the cost of the airplane and does not carry enough insurance for ‘loss of life and other property.’ Old Airplane Shop insurance was based on the value of general aviation and not jet airplanes. Therefore, \$1 million in insurance is more then [sic] \$3 million based on the value of the insured.” [FAA Exhibit 1, Item 1, p. 10]

Initially, the Record was unclear as to what insurance coverage requirement was applied to the Complainant’s proposed aircraft maintenance and repair CASP. To better understand what levels of

²⁴ Both the Complainant and Respondent submitted copies of the Sumner County Regional Airport Authority’s Minimum Standards and Rules and Regulations dated March 24, 1999. However, the language in this section contains slight variations. Most notably, FAA Exhibit 1, Item 1, exhibit 32 submitted by the Complainant requires mechanics be available on call within one hour. The Director has chosen to cite the version submitted by the Respondent, FAA Exhibit 1, Item 5, Exhibit A, exhibit 2, because it lacks the typos contained in the version submitted by the Complainant. The Director notes that the discrepancies are not central to the issues discussed in this Determination.

insurance the Respondent has deemed as acceptable, the FAA asked the SCRAA to provide a “list of all CASPs currently authorized to operate on the Airport and the acceptable insurance requirements and the dollar amount of insurance for each.” [FAA Exhibit 1, Item 17, p. 2] The Respondent states:

“Currently, there are two (2) CASPs operating on M-33. Jet Harbor, Inc. is a Full Service CASP and its agreement with the SCRAA is attached hereto as Exhibit 16. (\$5 million per occurrence). Flight Solutions, Inc., a Limited CASP and its agreement is attached hereto as Exhibit 17. (\$2 million per occurrence).” [FAA Exhibit 1, Item 18, p. 2]

However, the Sumner County Regional Airport and Jet Harbor, Inc., Lease Agreement, executed on October 26, 2007, states:

“16. LESSEE shall be responsible for maintaining and keeping in force at all times during the time of this Lease and any extension or renewal thereof, the following insurance.

(a)Continuing Public Liability and Property Damage Insurance Coverage, satisfactory to LESSOR, indemnifying and holding LESSOR and its Authority Board and employees harmless against any and all claims arising out of the use of leased premises as follows:

- (1) One Million (\$1,000,000.00) Dollars for personal injury;*
- (2) One Million (\$1,000,000.00) Dollars for property damage;*
- (3) One Million (\$1,000,000.00) Dollars as Hangar Keeper’s Insurance;*
- (4) One Million (\$1,000,000.00) Dollars as other aircraft liability; and;*
- (5) One Million (\$1,000,000.00) Dollars as Products Liability Insurance.*

(b)Fire and Extended Insurance coverage on the terminal building, maintenance hangar, fuel farms and fuel tanks in the amount of Five Hundred Thousand (\$500,000.00) Dollars or a figure not less than ninety (90) percent of the full insurable value thereof.” [FAA Exhibit 1, Item 18, exhibit 16, p. 5]

Jet Harbor’s Certificate of Liability Insurance sets the following insurance limits:

EACH OCCURRENCE	\$5,000,000
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$50,000
MED EXP (Any one person)	\$3,000
PERSONAL & ADV INJURY	\$5,000,000
GENERAL AGGREGATE	\$5,000,000
PRODUCTS – COMP/OP AGG	\$5,000,000
Gr. Hangarkeepers	\$5,000,000 at aircraft \$15,000,000 at occurrence

[FAA Exhibit 1, Item 18, Exhibit 16, p. 13]

Although the Respondent seems to have an understanding about the level of insurance carried by Jet Harbor, the Respondent does not seem as clear about the level of insurance it had originally specified as *acceptable*.

The Record remains poor with respect to Flight Solutions. The Lease Agreement executed by the SCRAA and Flight Solutions on January 19, 2002 states:

“15. LESSEE shall be responsible for maintaining and keeping in force at all times during the term of this Lease and any extension or renewal thereof the INSURANCE COVERAGE contained in EXHIBIT C of this Lease Agreement.” [FAA Exhibit 1, Item 18, exhibit 17, p. 3]

The Respondent did not provide or attach a copy of Exhibit C, so the FAA cannot determine what level of insurance was acceptable to the Respondent for this Limited CASP.

The Respondent did provide a copy of Flight Solution’s Certificate of Insurance. It sets the following limits:

EACH OCCURRENCE	\$2,000,000
DAMAGE TO RENTED PREMISES (Ea occurrence)	
MED EXP (Any one person)	\$1,000
PERSONAL & ADV INJURY	\$2,000,000
GENERAL AGGREGATE	\$2,000,000
PRODUCTS – COMP/OP AGG	\$2,000,000
Fire Leg.	\$50,000

Hangarkeepers Legal Liability:

\$500,000 Each Occurrence/\$250,000 Each Aircraft (\$5,000 Deductible)

[FAA Exhibit 1, Item 18, Exhibit 17, p. 10]

A second policy provides a limit of \$350,000 with a \$1,000 deductible for one building. [FAA Exhibit 1, Item 18, Exhibit 17, p. 9]

The Complainant also responded to the FAA’s request for additional information stating:

“In the previous documentation with TDOT [Tennessee Department of Transportation] and the ‘Good Faith’ proceeding, the value of \$3 Million was stipulated. A Maintenance shop tailored to General Aviation would have 10 times the amount of insurance with a \$1 million dollar policy, then [sic] a Maintenance Shop tailored to Corporate Jets.” [FAA Exhibit 1, Item 19, pp 9-10]

The March 26, 2007 SCRAA meeting minutes indicate a discussion comparing the insurance carried by the Complainant and the Full Service CASP. The Complainant applied for a Limited Service CASP, so this comparison should not have been relevant in the approval of the Complainant’s CASP application. A more pertinent comparison would be against the insurance requirements deemed acceptable by the SCRAA for Flight Solutions. Unfortunately, the documents presented in the Record do not allow the FAA to make such a comparison.

The Director notes the insurance requirements specified in the Complainant’s CASP Agreement executed on June 26, 2001. This agreement specifies that the Complainant must maintain “Combined Single Limit Bodily Injury and Property Damage \$1,000,000 each occurrence with Passengers limited to \$100,000 Each Person.” [FAA Exhibit 1, Item 1, exhibit 15, p. 1] Given the Complainant’s desire to add an additional aeronautical activity to its operations on the Airport and the six year gap between establishing CASP terms, it’s plausible the Authority would increase the insurance coverage required.²⁵

²⁵ See Scott Aviation v. Dupage Airport Authority, FAA Docket No. 16-00-19, (July 19, 2002) (Director’s Determination).

Insurance coverage rates are established in relationship to the risk associated with a proposed activity, current underwriting conditions, and insurance market availability, not projected gross revenues. The proposed \$3 million requirement could simply reflect an additional \$2 million for the maintenance and repair CASP. This would be similar to the policy obtained by Flight Solutions. Unfortunately, the Record is unclear as to the Respondent's rationale.

The Respondent may have attempted to apply its requirement for insurance *acceptable* to the Authority in a way to unjustly discriminate against the Complainant. However, the Complainant provides no evidence to establish that the dollar amount proposed by the SCRAA is unreasonable. Moreover, there is no evidence to suggest this amount is not obtainable. The Complainant has not sufficiently demonstrated how the Respondent's requirement for additional insurance coverage, for a new aeronautical activity, constitutes unjust discrimination.

The Director notes SCRAA's Minimum Standards are vague in their treatment of CASP insurance requirements. This makes it difficult for the Respondent to uniformly apply its standards, and presents the opportunity for complaints of violations of Federal Grant Assurance 22, *Economic Nondiscrimination*.

Aircraft Storage Requirements

Likewise, the requirements for Aircraft Maintenance and Repair CASPs do not specify minimum hangar space, but state *sufficient* space is required. At the time she proposed adding an aircraft maintenance and repair operation to her existing business at the Airport, the Complainant subleased a 60 foot by 80 foot hangar. [FAA Exhibit 1, Item 19, p. 16]. This is approximately 4,800 square feet of hangar space.

To better understand what amount of space the Respondent has deemed as acceptable, the FAA asked the SCRAA to provide a "list of all aircraft maintenance and repair CASPs currently authorized to operate on the airport and detail the amount of space each CASP occupies through lease and/or sublease." [FAA Exhibit 1, Item 17, p. 2] The Respondent states:

"Jet Harbor, Inc's [sic] has 10,000 square feet and Flight Solutions, Inc.'s has 24,000 square feet." [FAA Exhibit 1, Item 18, p. 3]

The FAA also inquired if "the space the Complainant leased from the Wilson Family Partnership be 'an area of sufficient size to accommodate all services' proposed by the Complainant in her request for an aircraft maintenance and repair CASP? If not, how much space did the Authority believe the Complainant's proposal would require?" [FAA Exhibit 1, Item 17, p. 2] The Respondent states:

"No, in that no business plan or application was ever submitted, it is not possible to answer this with any certainty. Nevertheless, based upon what the SCRAA was told orally, there is insufficient ramp space available for parked planes waiting to be repaired or picked up after repair." [FAA Exhibit 1, Item 18, p. 3]

The Record documents the SCRAA's concerns with the Complainant's use of ramp space prior to her request to extend to an aircraft maintenance and repair CASP. [FAA Exhibit 1, Item 1, exhibits 8, 17, 19, and 20] During the SCRAA's consideration of the Complainant's request, this matter was discussed:

"The authority discussed previous apron problems with the warbird operation and specified that no taxi ways [sic] or aprons would be blocked due to her maintenance CASP. Damian and Jet Harbor would lease parking spaces to Jena [sic] for storage of her aircraft. With the required documentation, her request will be approved. The motion

was voted on and carried.” [FAA Exhibit 1, Item 1, exhibit 21, p. 1 and FAA Exhibit 1, Item 18, exhibit 11 p. 1]

The FAA inquired about how such an arrangement might work, asking the Respondent, “how do you resolve competitive conflicts between a full service CASP and a limited service CASP when the limited service CASP is forced to sublease space from the full service CASP?” [FAA Exhibit 1, Item 17, p. 2] The Respondent states:

“This hypothetical question has not occurred because no Limited Service CASP is subletting from a Full Service CASP. However, if that were to occur, the SCRAA would act as a neutral arbitrator. After hearing and considering all relevant facts, the SCRAA would resolve the dispute.” [FAA Exhibit 1, Item 18, p. 4]

While the Director remains skeptical as to how such an arrangement might work, these reservations are balanced against the Airport Authority’s obligation to maintain the Airport. As noted in the Order, this “includes the responsibility to operate the aeronautical facilities and common use areas for the benefit of the public.” [See FAA Order 5190.6A, Sec. 4-7(a)] Ensuring that taxiways and apron areas are passable benefits all users of the Airport.

The Complainant alleges:

“No other CASP on the airfield is required to rent space or have an agreement with another CASP on the airfield...I have been made to make agreements with other CASP before I could have approval. No other CASP on the airfield has been subject to these conditions.” [FAA Exhibit 1, Item 1, p. 10.]

The Director inquired about this allegation, asking, “must limited service CASPs, like the Complainant, that are not full service CASPs, obtain both an agreement with the Authority to operate the CASP and a sublease with a full service CASP for space?” [FAA Exhibit 1, Item 17, p.2]

The Respondent explained:

“...when the Authority is also the landlord only one (1) written agreement is necessary. However, under the current circumstances, the answer is ‘yes.’ The business plan of the proposed CASP must be approved by the Authority and actual physical space on the airport grounds must be procured through a sub-lease with another owner of a business maintenance type hanger [sic].” [FAA Exhibit 1, Item 18, p. 3]

Requiring the Complainant to procure additional space for her proposed aeronautical activity – through either a CASP or the owner of a business maintenance type hangar – is not unreasonable or discriminatory given the Complainant’s space constraints which are further discussed under the subheading of *Complainant’s Use of Common Areas* below. Moreover, the Complainant did not object to this proposed arrangement during the time she believed her CASP request had been approved. Lastly, the Complainant fails to identify how any other businesses at the Airport have been permitted to make alternative arrangements in their procurement of space and CASP approval.

When proposing a new aeronautical activity on an airfield, the proponent of such a plan is responsible for demonstrating how its proposal will meet an airport’s minimum standards. The Record provides no evidence of the Complainant’s attempts to procure additional space for aircraft storage at the Airport. Therefore, the Complainant failed to address this concern originally raised by the Respondent during the

consideration of the Complainant's proposal to extend to an aircraft maintenance and repair CASP at the February 2007 SCRAA meeting.

The Record indicates that the Complainant objected to this arrangement after she was evicted from the hangar she leased from the Wilson Family Partnership. The Complainant states:

“Arranging my eviction from my 60 by 80 hangar, and then requiring me to sub-lease space from another CASP of a business maintenance type hangar, is not Fair or Reasonable.” [FAA Exhibit 1, Item 19, p. 16]

This allegation inaccurately reflects what occurred based on the preponderance of evidence contained in the Record. The Complainant was advised by the SCRAA to lease additional parking spaces from Jet Harbor in February 2007, when the SCRAA approved the Complainant's request to extend to an aircraft maintenance and repair CASP, predicated upon providing the required documentation. The Complainant's landlord, Wilson Family Partnership, initiated her eviction in April or May.²⁶

Because the Complainant has not established that she can meet the Airport's Minimum Standards through her existing arrangement for space on the Airport, the Director cannot conclude that the Respondent's request that the Complainant lease additional space is discriminatory or unreasonable.

Requirement for an Executed Lease Agreement Approved by the Authority

The Complainant describes her tenancy at the Airport as:

“My Tenancy History starts with Gene Gillespie, Gallatin Flying Service for about 10 months; the Bankruptcy Court and the Airport Authority for about 6 months; Stan Smith, Global Air Services for about 10 months; Again with the Airport Authority for about 7 months; and last with Ann Wilson, Wilson Family Partnership for 4 years and 4 months.” [FAA Exhibit 1, Item 19, p. 6]

The Minimum Standards clearly state, “No person shall use the Airport as a CASP until such person has executed a lease agreement approved by the Authority.” The Record does not contain a current executed lease agreement for Warbird SkyVentures, or the Complainant's proposed aircraft maintenance and repair CASP, the Old Airplane Shop. Wilson Family Partnership offered the Complainant an Addendum to Maintenance Portion to Lease effectively extending the Complainant's 2006 lease for the 2007 calendar year. [FAA Exhibit 1, Item 1 exhibit 7 and FAA Exhibit 1, Item 19, exhibit 19] However, the Complainant admits this lease was never executed because:

“my Landlord presented me a lease which at the time it was presented was in the ‘draft’ stage and needed corrections.” [FAA Exhibit 1, Item 1, p. 3]

Further, this lease agreement was for the existing area currently used by Warbird SkyVentures, not for the aircraft maintenance and repair CASP. Therefore, the Complainant did not have a current executed lease for any of her existing or proposed businesses at the Airport.

²⁶ The lease termination letter submitted by the Complainant and identified in the Administrative Record as exhibit 6 is dated May 4, 2007. However, the Complainant states, “Todd Wilson post-dated his signature.” [FAA Exhibit 1, Item 1, p. 9]. The Director believes the Complainant may have received this letter as early as April 5, 2007, prior to contacting the Tennessee Department of Transportation; however, the Record is unclear.

The Complainant and Wilson Family Partnership describe the lease held by Warbird SkyVentures from January 2007 until May 5, 2007 as a month to month lease. [FAA Exhibit 1, Item 1, p. 3 and FAA Exhibit 1, Item 1, exhibit 6] A month to month lease provides a lessee with a limited guaranteed period of tenancy. When determining whether or not a new aeronautical service provider should be permitted to conduct business on the Airport, it is reasonable for the Airport Authority to seek assurances from the proponent of such a business plan that its existence and ability to offer such services is for a period of longer than 30 days.

The Complainant contests this treatment as discriminatory citing Jet Harbor's lease history:

“The lease is dated for 01 August 2002 for a period of ‘Five Years’. Five years from 01 August 2002 would indicate the lease would expire on 31 July 2007. Exhibit 16 has a signature date of 26 October 2007. Illustrating Jet Harbor did not have a CASP agreement to be on the airfield from 01 August 2007 through 25 October 2007 totally 3 months. Operating without a CASP agreement is in violation of the Minimum Standards. Damien Weber, Jet Harbor, Inc. operated in violation of the minimum standard to have a CASP agreement for Three months.” [FAA Exhibit 1, Item 19, p. 17]

The decision before the Director is not to determine which parties violated the Airport's Minimum Standards. The question at hand is whether or not the Respondent applied the Airport's Minimum Standards in a way to unjustly discriminate against the Complainant.

As discussed in Richard M. Grayson and Gate 9 Hangar, LLC v. DeKalb County, GA (FAA Docket No. 16-05-13) (February 1, 2006) (Director's Determination) the FAA has acknowledged that several factors can distinguish parties that a sponsor can justly treat differently, without violating its Federal obligations. Such factors may be: period of lease, business plan proposed, location of facilities, level of service and amenities, scope of services, investment, market conditions, and reasonable actions by the sponsor to promote and protect its ability to continue to serve the interests of the public in civil aviation, including the enlistment of prudent business practices that may change over time.²⁷

The Complainant compares the treatment of a newly proposed aircraft maintenance and repair CASP to the extension of the FBO's lease/CASP agreement. The Director does not find these situations to be similar. It is reasonable for the Airport Authority to hold over a full service FBO providing essential business services, such as fueling, during the time a new lease/CASP agreement is directly negotiated between the FBO and the Airport Authority. At the time the Complainant proposed to establish a new business on the Airport, she was in the process of renegotiating her sublease for hangar space with a third party.

Moreover, the Director notes that the SCRAA voted to rescind the conditioned approval of the Complainant's request prior to raising this concern.

“There was discussion of Ms. Moore's request for a CASP. A comparison was made of insurance carried by Jenna [sic] Moore and Damian Weber. Ms. Moore is insured for \$1,000,000; Damian Weber is insured for \$3,000,000. She continues to park her motor home near the hangar obstructing the use of the area. Derrick called to have her move her motor home. She stated they were preparing to leave town. After review of the minimum standards and requirements, Rich Coker made a motion to rescind the previous motion passed by the Authority concerning Ms. Moore's request for a CASP. The Authority was mistaken when the previous motion was passed. David Blankenship

²⁷ See also Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket No. 16-99-10 (August 30, 2001) (Final Agency Decision and Order), affirmed in *Wilson v. FAA* 372 F.3d 806 (6th Cir. 2004).

seconded the motion which passed unanimously. Mr. Coker also made a motion that if Ms. Moore is still interested in the future to extend to a CASP she should work out an agreement prior to presenting it to the Authority. Bill Sudekum seconded the motion which passed unanimously...

“Charlie Moore reminded the Authority of the letter the Authority requested Mr. Sudbury send Ms. Moore stating violations. A signed lease is required for an agreement. It was pointed out that Ms. Moore never signed her lease. Charlie Moore made a motion that the Authority confer with the owner of the hangar outlining all of the issues concerning the Authority. Rich Coker seconded the motion which passed unanimously.” [FAA Exhibit 1, Item 1, exhibit 22 and FAA Exhibit 1, Item 18 exhibit 12, p. 2]

Therefore, the Director finds that the Respondent did not apply its requirement for an executed lease agreement approved by the Authority in a way to unjustly discriminate against the Complainant.

Complainant’s Use of Common Areas

The Complainant’s use of common apron areas is well documented in the SCRAA’s meeting minutes. The SCRAA meeting minutes from November 22, 2004, October 23, 2006, and January 8, 2007, each indicate a discussion of the Complainant’s parking of a motor home and an aircraft obstructing a taxiway, impacting other aircraft operators [FAA Exhibit 1, Item 1, exhibits 17, 18, 20-22.] The February 26, 2007 SCRAA meeting minutes indicate a discussion of, “previous apron problems with the warbird operation”, and the March 26, 2007 SCRAA meeting minutes state, “She continues to park her motor home near the hangar obstructing the use of the area.” However, the Record includes only one written notification to the Complainant of these concerns, FAA Exhibit 1, Item 1, exhibit 8. This item is a letter dated November 28, 2004, in which the Respondent notified the Complainant she was in violation of the Authority’s Minimum Standards.²⁸ The Record contains a second letter from the SCRAA to the Complainant dated January 15, 2005 which authorized the parking of the motor home behind the hangar leased by the Complainant but warned, “under no circumstances, should the motor home block the access to any hangar at any time.” [FAA Exhibit 1, Item 19, exhibit 24]

Both the Complainant and the Respondent acknowledge the Respondent’s March 2007 verbal warning regarding the parking of the motor home. In March of 2007, the airport management called Warbird SkyVentures and requested the motor home be moved. These telephone conversations are documented by the Complainant, her employee, and the March 26, 2007 SCRAA meeting minutes. The Complainant admits this incident, stating:

“The motor home arrived with supplies including a propeller for my Stearman. Derrick called and spoke with Sherri Blake, General Manager. (Please see Sherri’s statement.) Derrick called demanding we move the motor home. Sherri explained that we are finishing unloading the motor home and then it will be moved. She further explained that we were preparing to leave for our next barnstorming location. Derrick called back and made an additional demand to move the motor home or it will be towed. Derrick stated ‘I am in the middle...and they told me I had to have it towed.’ Sherri responded with, ‘Do what you have to do.’ We completed our task of loading supplies for the next location, and departed to our next location. The motor home was parked in front of my

²⁸ FAA Exhibit 1, Item 1, exhibit 25 is a statement of former Airport Manager Sam Garrett, the author of exhibit 8, stating he did not write the November 28, 2004 letter notifying the Complainant of the Minimum Standards Violations.

hangar for approximately 18 hours, in what is now referred to as a 'common use area'." [FAA Exhibit 1, Item 1, pp 8-9]

A statement provided by the Complainant and signed by her employee, Sherri Blake, states:

"In March 2007 I received a call from Derrick on behalf of the airport management. Derrick called to tell me that the motor home had to be moved from in front of Warbird SkyVentures hangar. I told him that the motor home would be moved in a couple of hours due to it being loaded to go to the next location. Derrick called back a second time and said that he was in the middle of this. He said if we did not move it that it would be towed. I told Derrick at that point to do what he had to do." [FAA Exhibit 1, Item 1, exhibit 28]

The minutes of the March 26, 2007 SCRAA meeting note:

"She [Ms. Moore] continues to park her motor home near the hangar obstructing use of the area. Derrick called to have her move her motor home. She stated they were preparing to leave town." [FAA Exhibit 1, Item 1, exhibit 22, p. 2]

In reference to complaints regarding parking of vehicles and unleashed dogs, the Complainant states:

"If the area in front of my hangar is for use by everyone and designated as 'common-use', I fail to see why I am not allowed to use it... I parked my motor home directly in front of my hangar for approximately 18 hours. My motor home was not within any zones, or blocking any hangars.

The other tenants have their personal dogs with them at the airport. There is nothing in the minimum standards that does not allow a dog, cat, or any other personal pet. My dogs are Golden Retrievers and I do not allow them to run loose on the airport or anywhere in the vicinity of a road or moving traffic of any sort. And I have not received any indication through any notification standard or non standard that my dogs are any issue." [FAA Exhibit 1, Item 1, p. 7-8]

The Director reminds the Complainant the Federal Grant Assurances are not intended to protect nonaeronautical uses of airport property, such as motor home operations or personal pets. The Airport Rules and Regulations clearly state a CASP must obtain permission from the SCRAA prior to using Common Use Areas for anything other than the intended use. Further, it is appropriate for airport operators to develop rules and regulations for vehicle operations and parking, as well as pets on the Airport. The Order notes that the key goal of local regulations is to control the use of the airport so that hazards to aircraft and people on the ground are eliminated.

The Complainant asserts the Minimum Standards do not explicitly prohibit dogs from being on the Airport. Although the SCRAA Rules and Regulations do not specifically address pets on the Airport, it is appropriate for the Respondent to request the Complainant remove her dogs, especially if they present a safety hazard. [*See* FAA Order 5190.6A, Sec. 4-7(b)]

SCRAA's Treatment of Complainant Compared to Other CASP Requests

The Complainant alleges the SCRAA has manipulated their Minimum Standards to favor other tenants' requests for CASP agreements. [FAA Exhibit 1, Item 19, pp. 13 -14] An allegation of unjust economic discrimination under Grant Assurance 22, should contain a description of the alleged preferential

treatment of another party, how the other party is similarly-situated, and that the complainant requested similar treatment and was denied.

First, the Complainant contends that an FBO received preferential treatment because it was not required to obtain a CASP agreement for aircraft maintenance. The Complainant states:

“Flight Solutions is an aircraft brokerage company on the airfield. Flight Solutions also advertises aircraft maintenance. Flight Solutions does not have a Maintenance CASP agreement, and it is operating on the airfield with no accusations of non-compliance.”
[FAA Exhibit 1, Item 1, p. 6]

The lease/CASP agreement executed between the Respondent and Flight Solutions on January 10, 2002 permits Flight Solutions to engage in:

“...the business of aircraft sales, management, leasing, consulting, charter, maintenance repairs, upholstery and any other aviation-related activity(s) at a future date subject to prior approval by the LESSOR...” [FAA Exhibit 1, Item 18, exhibit 17, p. 1]

Given that Flight Solution’s lease/CASP agreement permits it to conduct maintenance repairs, the Director does not find any preferential treatment.

The Complainant also compares her request for a maintenance and repair CASP to one made by another tenant at the Airport. She states:

“My request for a Maintenance CASP on the airfield was initiated and approved the same as the request for a Maintenance CASP by Roger Richardson....”

Mr. Richardson’s Maintenance CASP has not been under scrutiny and never been challenged.” [FAA Exhibit 1, Item 7, p. 4]

The Complainant contends that she and Mr. Richardson are similarly situated with regards to space:

“My hangar, now referred to as Corporate Hangar #3, is located next door to Mr. Richardson’s hangar, Corporate Hangar #2. The hangars were built at the same time, same design and layout with the same ramp space.” [FAA Exhibit 1, Item 7, p. 4]

However, the Complainant offers no information regarding Mr. Richardson’s insurance requirements or lease duration.

The Complainant notes Mr. Richardson’s request, made at the March 22, 2004 SCRAA meeting, was approved by the SCRAA:

“Sam Garrett, Airport Manager, presented a letter from Roger Richardson requesting a limited service CASP to work on the aircraft he will resale [sic]. Mr. Garrett made a motion to allow a limited CASP for Mr. Richardson. David Blankenship seconded the motion and added an amendment that Mr. Richardson adhere with strict compliance to the minimum standards and FAR’s [sic]. The motion passed unanimously.” [FAA Exhibit 1, Item 7, exhibit 1 and FAA Exhibit 1, Item 19, exhibit 41]

To verify whether or not preferential treatment occurred, the FAA asked the Respondent to provide a “list of all CASPs currently authorized to operate on the Airport and the acceptable insurance requirements

and the dollar amount of insurance for each.” [FAA Exhibit 1, Item 17, p. 2] The Respondent listed only Jet Harbor, Inc., and Flight Solutions. [FAA Exhibit 1, Item 18, p. 2] The Complainant provided no other information to document any current CASP activities that Mr. Richardson may be conducting. Therefore, the question of whether or not Mr. Richardson may have received preferential treatment, compared to the Complainant, remains uncertain.

Lastly, the Complainant compares her request for a maintenance and repair CASP to one made by another tenant in 1999. She also implies that the SCRAA manipulated the Minimum Standards in order to approve this request. The Complainant states:

“Ed Herrick is authorized to operate as a Maintenance CASP on the Airfield.” [FAA Exhibit 1, Item 19, p. 13]

*“To insure the standards are **uniformly applicable** my operation would not of had to meet the same 5 wavered [sic] standards of Ed Herrick’s operation. I was scrutinized on all Minimum Standards.”* [FAA Exhibit 1, Item 19, p. 14]

The minutes from the December 13, 1999 SCRAA meeting state:

“Mr. Herrick stated his case for becoming a CASP at this airport and ask [sic] for five waivers from some of the requirements of the Minimum Standards. Mr. Blankenship made a motion to approve the 5 waivers to Minimum Standards, the motion was seconded by Mr. Sudekum. The motion was amended by Mr. Sudbury to have Ed Herrick come to the next meeting with a comparison of what is standard practice in airports in our area such as Lebanon, Portland, Murfreesboro etc. What are there [sic] rules and rate comparisons and also to ask Mr. Gillespie to present his side of the case for not allowing additional maintenance CASP’s. Mr. Leath seconded the motion and both the original motion and the amendment passed unanimously. Further Mr. Herrick could at that time present the board with a business plan.” [FAA Exhibit 1, Item 19, exhibit 50, pp 1-2]

The Record is unclear with regards to the type of CASP requested, the waivers requested, and the SCRAA’s final disposition on the CASP request. The Complainant has failed to explain how Mr. Herrick is similarly-situated. While she contends that the SCRAA’s willingness to consider five waivers to its Minimum Standards is preferential treatment, the Record does not state whether or not these waivers were actually granted. Nor is there any evidence that the Complainant requested a waiver and was denied one where another tenant was granted a waiver.

In Grayson et al v. DeKalb County, the Director found in order to sustain an allegation of unjust economic discrimination, the Record must show the elements of unjust economic discrimination under Federal Grant Assurance 22. The process under Part 16 measures the documentation and information submitted to the Record by a preponderance of proof. The Record must show that another party similarly situated to the Complainant received preferential treatment denied to the Complainant in similar situations [DeKalb, 16-05-13, February 1, 2006.] The Record fails to substantiate this claim.

Issue (2): *Whether the Respondent’s failure to grant the Complainant an agreement to operate an aeronautical service constitutes an unreasonable denial of access in violation of 49 U.S.C. § 47107(a)(1), and Grant Assurance 22, Economic Nondiscrimination (a).*

The Complainant states, "I requested to open a maintenance shop (Old Airplane Shop) at the Sumner County Airport. In February, I was approved. In March, I was given an eviction letter." [FAA Exhibit 1, Item 1, exhibit 1].

The Respondent answered:

"Neither Gina M. Moore; Old Airplane Shop; Museum of Aviators; and/or Warbird Skyventures have applied pursuant to the mandates of SUMNER COUNTY REGIONAL AIRPORT AUTHORITY'S MINIMUM STANDARDS [sic] AND RULES AND REGULATIONS to operate a CASP on M-33 subsequent to the termination of the CASP Agreement dated June 26, 2001." [FAA Exhibit 1, Item 5, p. 1]

As discussed above, based on the preponderance of evidence contained in the Record, the Director has concluded that on February 26, 2007, the Respondent approved the Complainant's request to extend to an aircraft maintenance and repair CASP predicated upon receiving the required documentation. Then on March 26, 2007, the Respondent rescinded this action.

Based on the lengthy discussion contained under Issue (1) above, the Director does not find this denial to constitute an unreasonable denial of access. As an aeronautical service provider on the airfield, the Complainant has a responsibility to understand and adhere to reasonable business practices established by the SCRAA. This includes, but is not limited to, reading and understanding agreements before entering into such contracts, negotiating agreements in a timely manner, understanding and complying with the Airport's minimum standards, and cooperating with requests from the airport management. In SeaSands Air Transport, Inc. v. Huntsville-Madison County Airport Authority, FAA Docket No. 16-05-17 (August 28, 2006) (Director's Determination), the FAA found that a sponsor's federal obligations, "do not require it to continue a business relationship with any corporation that fails to exercise management controls or sufficient corporate governance to prevent and correct highly unprofessional behavior by its principals or employees."²⁹ [See Director's Determination, 16-05-07, p. 23.] The Record indicates a pattern of the Complainant's disregard of the Airport's Minimum Standards. [FAA Exhibit 1, Item 1, exhibits 5, 8, 10, 11, 12, and 17-22.] It is reasonable for the SCRAA to require aeronautical service providers seeking to expand their services to be in compliance with the Airport's Minimum Standards.

It is reasonable for the SCRAA to require entities proposing to provide new aeronautical services on the Airport to take sufficient steps to demonstrate substantial or realistic intent in support of their proposed endeavors. This precedent is cited in Flamingo Express, Inc., v. City of Cincinnati, OH (FAA Docket No. 16-06-04) (August 9, 2007) (Final Agency Decision and Order, p. 11, affirmed in *Flamingo v. FAA*, 536 F.3d 561 (6th Cir. 2008)). The Record indicates the Complainant had her representative verbally present the request before the SCRAA. [FAA Exhibit 1, Item 1, exhibit 21] The Complainant also developed a logo and made electrical repairs to her subleased hangar. [FAA Exhibit 1, Item 1, exhibits 33, 29, and 30] However, the Record does not describe the Complainant's attempts to secure adequate, long-term space for her proposed aircraft maintenance and repair CASP or purchase insurance related to the additional risks it might impose. Based on the Record, the Director finds the details provided by the Complainant are not sufficient for the Respondent to reasonably evaluate the Complainant's business proposal.

Therefore, the Director finds the Respondent is not in violation of Grant Assurance 22, Economic Nondiscrimination, (a).

²⁹ Kent J. Ashton, et al, v. City of Concord, NC, FAA Docket No. 16-02-01 (February 27, 2004) (Final Agency Decision and Order).

Issue 3: Whether the Respondent has limited the provision of specific aeronautical services at the airport to a single provider, and is in violation of 49 U.S.C. § 47107(a)(4), and Grant Assurance 23, Exclusive Rights.

The Complainant alleges the SCRAA violated Grant Assurance #23, *Exclusive Rights*. She states:

“The Sumner County Regional Airport Authority Violated C. 23. Exclusive Rights...”
[FAA Exhibit 1, Item 7, p. 2]

“By forcing my operation to lease tie-down space from Jet Harbor indicates Jet Harbor has Exclusive Rights, and Exclusive Rights are a violation of the grant assurances.”
[FAA Exhibit 1, Item 19, p. 4]

“By requiring me to sub-lease space from another CASP of a ‘business maintenance type hangar’ is an unreasonable restraint and a violation of an exclusive right grant assurance.” [FAA Exhibit 1, Item 19, p. 16]

Although the Complaint is imprecise in its allegations regarding Grant Assurance 23, *Exclusive Rights*, the Director reviewed the lease executed between Jet Harbor and the SCRAA on October 26, 2007 to determine if any special rights or privileges are conveyed to the full service CASP. Two provisions of this lease will be discussed.

Scope of Lease

The lease encompasses the following airport property:

“...terminal building, less LESSOR’S office and Warbird’s office, maintenance hangar, all existing ramp, tiedown spaces less those portions necessary for ingress and egress of aircraft.” [FAA Exhibit 1, Item 18, exhibit 16, p. 1]

FAA Order 5190.6A explains that the leasing to one enterprise of all available airport land and improvements planned for aeronautical activities will be construed as evidence of an intent to exclude others unless the lease contains certain provisions related to the management of the airport or it can be demonstrated that the entire leased area is presently required and immediately needed to conduct activities outlined in the lease. [*See* FAA Order 5190.6A, Sec. 3-9(c)] Although the SCRAA has not leased all available airport land to Jet Harbor, the lease does give this full service CASP the exclusive ability to sublease tie-down space on the ramp.

With that said, the Order also provides that while an airport owner is not required to construct hangars and terminal facilities, it has the obligation to make available suitable areas or space on reasonable terms to those who are willing and qualified to offer flight services to the public (*e.g.*, air carrier, air taxi/charter, flight training) or support services (*e.g.*, fuel, storage, tie-down, flight line maintenance) to aircraft operators. Unless it provides these services itself, the airport owner has a duty to negotiate in good faith for the lease of such premises as may be available for the conduct of aeronautical activities. [*See* FAA Order 5190.6A, Sec. 4-15]

Aircraft storage is recognized as an aeronautical activity. As such, the SCRAA is obligated to ensure availability of this service to the public on fair and reasonable terms. In this case, the Director recognizes the SCRAA’s hybrid approach to its obligation. The SCRAA has chosen to enter into direct leases for aircraft storage with tenants seeking space to build hangars, such as its lease with the Wilson Family

Partnership. Due to the long-term nature of these types of agreements, the SCRAA is prudent to assert and maintain a direct contractual relationship with these tenants. However, the SCRAA has contracted the direct supervision of tie-down space on the ramp, typically leased by tenants of a more transient nature, to its full service CASP, Jet Harbor.

Above, the Director found that requiring the Complainant to procure additional space for her proposed aeronautical activity – through either a CASP or the owner of a business maintenance type hangar – is not unreasonable or discriminatory given the space constraints associated with the Complainant’s flying operation. But the February 27, 2007 meeting minutes state:

Damian and Jet Harbor would lease parking spaces to Jena [sic] for storage of her aircraft.” [FAA Exhibit 1, Item 1, exhibit 21, p. 1 and FAA Exhibit 1, Item 18, exhibit 11 p. 1]

Although the Director requested the Respondent to provide a detailed explanation as to what transpired regarding the Complainant’s request for a proposed maintenance and repair CASP at this meeting, the Respondent referred back to the minutes stating, “See, Exhibit 11, supra.” [FAA Exhibit 1, Item 17 and FAA Exhibit 1, Item 18, p. 2] Therefore, the Director concludes that the only space for aircraft storage available at the time of the Complainant’s request was already leased by the SCRAA to Jet Harbor.

The Respondent admits that “currently, there is zero (0) space available for CASP use.” [FAA Exhibit 1, Item 18, p. 3] Given the uncertainty associated with the Complainant’s request and her subsequent eviction from the hangar she subleased from the Wilson Family Partnership, the Director cannot ask the Respondent to contemplate how the terms of its recently negotiated lease/CASP agreement with Jet Harbor might have differed with regards to the Complainant’s request to establish an aircraft maintenance and repair facility at the Airport. The Director reminds the SCRAA that:

“A single aeronautical enterprise although meeting all reasonable standards and qualifications should be limited, as a result of this policy, to the lease of such space as is demonstrably needed. If the need for additional space becomes apparent at a later date, such space, as well as any new areas developed for the service and support of aeronautical activities, must be made available to all qualified proponents or bidders, including the incumbent.” [FAA Order 5190.6A, Sec. 3-9(c)(2)]

Competition Clause

The Director also identified the following clause in the lease executed between Jet Harbor and the SCRAA on October 26, 2007 as inconsistent with the Respondent’s Federal Grant Assurances:

“It is expressly understood between the parties that these activities shall not be exclusive rights of the LESSEE, however LESSOR **shall not** attempt to start, engage in or assist with any business that may be in direct competition with LESSEE’s business on the airport.” [FAA Exhibit 1, Item 18, exhibit 16, p. 1]

As discussed in FAA Advisory Circular 150/5190-6, *Exclusive Rights at Federally-Obligated Airports*, “significant to understanding the exclusive rights policy, is the recognition that it is the impact of the activity, and not necessarily the airport sponsor’s intent, that constitutes an exclusive rights violation.” In this case, an express agreement that the SCRAA will not assist with any business that may be in direct competition with Jet Harbor seeks to limit the provision of competitive services at the Airport. Depriving

the aeronautical public of the benefits of a competitive enterprise limits the usefulness of the Federal investment in the Airport by conferring an exclusive right. [See FAA Order 5190.6A, Sec. 3-8(a)]³⁰

The SCRAA's March 2007 meeting minutes note that concerns regarding the Complainant's ability to comply with the Minimum Standards are raised by Jet Harbor's representative. The minutes state:

"Mr. Weber maintains the FBO needs competition but there is not enough room for her to operate a CASP at the present location..."

[FAA Exhibit 1, Item 1, exhibit 22 and FAA Exhibit 1, Item 18 exhibit 12]

The SCRAA's decision to rescind its previous motion with regards to the Complainant, when viewed solely within the context of this clause, creates the perception of a discriminatory action taken by the Respondent to protect Jet Harbor. However, the Record does not establish this outcome. The lease contained in the Record was executed on October 26, 2007. [FAA Exhibit 1, Item 18, exhibit 16] The SCRAA's decision to rescind the Complainant's conditional approval occurred six months earlier. At the time the Complainant requested to establish an aircraft maintenance and repair CASP, the relationship between the SCRAA and Jet Harbor was governed by a lease which became effective on August 1, 2002 and subsequently expired on July 31, 2007. [FAA Exhibit 1, Item 18, exhibit 16] Although Flight Solutions, another limited service CASP at the Airport, is permitted to conduct aircraft maintenance and repair activities under their lease executed on January 10, 2002, the initial five-year term of the agreement had expired at the time of the Complainant's request. [FAA Exhibit 1, Item 18, exhibit 17]

The Complainant has not established the presence of the clause discouraging the SCRAA to take actions to assist any activities which would directly compete with Jet Harbor at the time her request was considered, conditionally approved, and subsequently denied. Moreover, the entirety of the Record, as discussed at length above, documents more substantive reasons to support the SCRAA's March 2007 action with regards to the Complainant's request.

With that said, the Director cautions the SCRAA that the impact of this clause and its decision to lease all available CASP space on the Airport to tenants presently operating on the airfield could chill the interest of potential aeronautical service providers and create standing for another party to allege a violation of Exclusive Rights in the future. But at this time, the Respondent has not limited the provision of specific aeronautical services at the Airport to a single provider, and is not in violation of 49 U.S.C. § 47107(a)(4), and Grant Assurance 23, *Exclusive Rights*.

Issue 4: *Whether the Respondent's processes and procedures for reviewing the Complainant's request to provide an aeronautical service at the airport ceded its rights and powers in violation of 49 U.S.C. § 47107(a) and Grant Assurance 5, Preserving Rights and Powers.*

The Complainant alleged a violation of Grant Assurance 5 in her reply, stating:

"The Sumner County Regional Airport Authority Violated C. 5. Preserving Rights and Powers..." [FAA Exhibit 1, Item 7, p. 2]

The Complainant never explains her rationale for this specific allegation, and the Respondent has not acknowledged it. However, the Director finds this issue to be of merit and central to the dispute between the parties.

³⁰ This action could also be a violation of Grant Assurance No. 5, Rights and Powers which is further discussed *infra*.

Grant Assurance 5, *Preserving Rights and Powers*, prohibits the airport sponsor from taking actions which would deprive it of any of its rights and powers that are necessary to perform all of the conditions of its grant agreements and other Federal obligations. The grant assurance specifically states:

The airport sponsor will not take or permit any action which would operate to derive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

FAA Order 5190.6A describes the role of owners of public-use airports developed with Federal assistance as being “more than a passive landlord of specialized real estate.” It explains that these sponsors have an obligation to maintain the airport and operate the aeronautical facilities and common use areas for the benefit of the public. To fulfill this obligation, airports should adopt and enforce adequate rules, regulations, or ordinances as necessary to ensure the safe and efficient operation of the airport. Additionally, terms imposed on airport users must be fair, reasonable, and applied without unjust discrimination. [*See* FAA Order 5190.6A, Sec. 4-7 and 4-13]

The Order outlines the standard for compliance, stating, “It is the FAA’s position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating regulations, etc.) is in place which in the FAA’s judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out.” [FAA Order 5190.6A, Sec. 5-6(a)(2)]

The Director is concerned that the Respondent fails to meet this standard with regard to Grant Assurance 5. The Record documents informal business practices, ad hoc procedures, and non-transparent decision-making processes on the part of the Respondent. This casual approach to airport management erodes a sponsor’s ability to establish a program to address its respective grant obligations and effectively implement the program. A ceding of the sponsor’s ability to preserve its rights and powers occurs.³¹

This Complaint arose when the SCRAA began to review a general business proposal against its vague Minimum Standards through an informal process previously considered acceptable to both parties. The Respondent conditionally approved the Complainant’s request to establish an aircraft maintenance and repair business, an aeronautical activity which exposes the airport sponsor to liability, without ever reviewing any type of written business plan or proposal. The conditional approval was verbally conveyed to the Complainant’s representative and subsequently recorded in the minutes of the meeting. To better understand the SCRAA’s decision-making process with regard to the Complainant’s request, the Director requested the Respondent provide a detailed explanation as to what transpired regarding the Complainant’s request for a proposed maintenance and repair CASP at this meeting. [FAA Exhibit 1, Item 17] The Respondent referred back to the minutes stating, “*See, Exhibit 11, supra.*” [FAA Exhibit 1, Item 18, p. 2] As such, the Director has relied on its understanding – instead of the Respondent’s explanation and rationale – to determine what occurred. The Director concludes, based on the minutes, that the Respondent did indeed conditionally approve the Complainant’s request despite its more recent

³¹ The Director recently found an airport sponsor in violation of Grant Assurance 5 because the sponsor surrendered significant rights and powers when it entered into a leaseback lease arrangement with an airport tenant. The Director’s determination was affirmed by the Associate Administrator. [*See Boston Air Charter v. Norwood*, FAA Docket No. 16-07-03, (August 14, 2008) (Final Agency Decision and Order)]

assertion to the contrary. The laxity and incoherence associated with this decision making process causes the Director to question if the Respondent fully understands its Federal obligations.

The lack of information regarding what transpired during the time between the SCRAA's conditional approval of the Complainant's request and the meeting when it was rescinded causes the Director to question the adequacy of the SCRAA's program to reasonably carry out its commitments. The Record lacks any correspondence or communication from the SCRAA to the Complainant informing her of the conditional approval, its duration or possible limitations, or any discussion of next steps needed to achieve full approval. Nor does the Record indicate whether or not the Complainant provided the requested documentation to the airport manager or the SCRAA.³²

The Record does, however, note that on March 26, 2007, the full service CASP operator objected to the Complainant's request to establish an aircraft maintenance and repair CASP stating, "the FBO [Jet Harbor] needs competition but there is not enough room for her to operate a CASP at the present location." [FAA Exhibit 1, Item 1, exhibit 22 and FAA Exhibit 1, Item 18 exhibit 12] After a discussion initiated by the Complainant's potential competitor, a "motion to rescind the previous motion passed by the Authority concerning Ms. Moore's request for a CASP" was made and passed. [FAA Exhibit 1, Item 1, exhibit 22 and FAA Exhibit 1, Item 18 exhibit 12] In an attempt to understand this decision making process, the Director requested the Respondent to provide a detailed explanation as to what transpired regarding the Complainant's sublease tenancy and potential CASP tenancy at the Airport during this meeting. [FAA Exhibit 1, Item 17] The Respondent referred back to the minutes stating, "See, Exhibit 12, attached hereto." [FAA Exhibit 1, Item 18, p. 2] The Director views this type of response as not responsive to the questions under consideration. As a result of the foregoing and the specific circumstances addressed herein, the Director questions if the Respondent fully understands its Federal obligations.

Based on reading the minutes, a casual observer might conclude that the SCRAA rescinded its conditional CASP approval to protect the business interests of its full service CASP when it was urged to do so. This raises the question of whether the Respondent is in compliance with grant assurances related to Economic Nondiscrimination and/or Exclusive Rights effectively demonstrating that the SCRAA has not taken the steps needed to reasonably preserve its rights and powers as an airport proprietor.

After the SCRAA's March 26, 2007 meeting, the SCRAA communicated its concerns about the Complainant's ability to adhere to the Minimum Standards to her landlord. [FAA Exhibit 1, Item 1, exhibit 5 and FAA Exhibit 1, Item 18, exhibit 10] However, the Record provides no evidence as to whether or not the SCRAA notified the Complainant of their decision to rescind the conditional approval of her request to establish an aircraft maintenance and repair business. Again, the vagueness of this process and the lack of communication between the airport sponsor and a potential aeronautical business operator effectively cedes the sponsor's proprietary powers and creates an uncertain business environment.

These convoluted and lax business practices become even more difficult to decipher once the Complainant seeks outside mediation. The Respondent altered its position on several issues between the time of the Tennessee Department of Transportation's mediation and its response to the Complaint. Specifically, the Record contains contradictory statements regarding the status of the Complainant's 2001 CASP agreement and the validity of Complainant's application for an

³² While the FAA is interested in current compliance, there is nothing to indicate that the Respondent has taken any action to address the Director's stated concerns.

aircraft and maintenance repair CASP. Additionally, the Respondent either provided inaccurate information regarding its past contractual dealings with the Complainant or it lacks a record-keeping system sufficient to accurately catalogue its leaseholds. For example, its October 26, 2007 lease agreement with Jet Harbor specifically excludes the “Warbird’s office.” [FAA Exhibit 1, Item 18, exhibit 16, p. 1] But when the Director requested copies of any and all executed and unexecuted agreements between the Complainant and Respondent as well as information regarding the Complainant’s tenancy at the Airport, the Respondent only provided a copy of the June 25, 2001 CASP agreement and stated “Complainant has no tenancy history at M-33.” [FAA Exhibit 1, Item 18] However, additional documents submitted by the Complainant reference other agreements between the Respondent (and/or its airport tenants) and the Complainant for office space and a hangar. [FAA Exhibit 1, Item 1, exhibit 12, FAA Exhibit 1, Item 19, exhibit 13, p. 2, FAA Exhibit 1, Item 19, exhibit 16, p. 2, and FAA Exhibit 1, Item 19, exhibit 17, p. 2]

The task of the Director is not to determine if the Complainant did in fact apply for a CASP agreement or decide whether or not such agreement was approved and later rescinded. The Director must determine whether or not the airport sponsor is in compliance with its Federal Grant Assurances. The fact that so much analysis has been devoted to understanding what transpired reinforces the need for improved business practices, greater transparency, and better communication between the Airport sponsor and its users.

The FAA encourages airport management, as a matter of prudence, to establish minimum standards to be met by all who would engage in a commercial aeronautical activity at the airport. It is the prerogative of the airport owner or sponsor to impose conditions on users of the airport to ensure its safe and efficient operation. Such conditions must be fair, equal, and not unjustly discriminatory. They must be relevant to the proposed activity, reasonably attainable, and uniformly applied. Once the airport sponsor has established minimum standards, it should apply them objectively and uniformly to all similarly situated on-airport aeronautical activities and services. [FAA AC 150/5190-7, section 1.1.] See Flightline v. Shreveport, FAA Docket No. 16-07-05 (March 7, 2008) (Director’s Determination).

Moreover, the establishment of minimum standards is the FAA’s recommended way for a sponsor to deal with inherent friction among competing aeronautical service providers and a variety airport users. But it is through the sponsor’s objective and uniform application of its minimum standards that allows it to meet the standard of compliance. Granted, the standard of compliance does not require that airport sponsors enforce minimum standards so rigidly as to require identical tone and posture toward all airport users that have different records and history with the sponsor. However, the FAA does require airport sponsors to apply their minimum standards consistently through their interactions with aeronautical users and service providers.

The SCRAA Minimum Standards are vague in their treatment of CASP space and insurance requirements. This may make it difficult for the Respondent to uniformly apply the standards, and presents the opportunity for complaints of violations of Federal Grant Assurance 22, *Economic Nondiscrimination*. In addition, although non-specific requirements can create a more flexible negotiating position for the airport proprietor, vague prerequisites could potentially stifle the interest of future business proponents. The Respondent is encouraged to review FAA Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities*. This guidance outlines factors to consider when developing airport minimum standards, and page five specifically discusses consideration of the amount of space required for each type of aeronautical activity and the minimum insurance requirements to impose upon each operator.

The SCRAA’s history of referencing, applying, and communicating its minimum standards is inconsistent. Although the Record indicates a pattern of the Complainant’s disregard of the Airport’s

Minimum Standards, the SCRAA's ability to communicate the need for remedy directly to the Complainant has been sporadic at best. In an effort to better understand the SCRAA's business practices, the FAA requested, "copies of all communications between the Complainant and the Respondent, including any warning letters of Minimum Standards violations." [FAA Exhibit 1, Item 17, p. 2] The Respondent provided copies of three letters: a letter from the Complainant to the Respondent dated June 19, 2001, a letter from the Respondent to the Complainant dated June 20, 2001, and a letter from the Respondent to the Complainant dated November 28, 2004³³. [FAA Exhibit 1, Item 18, exhibits 13 – 15] The Record contains no evidence of written communication from the Respondent to the Complainant regarding its concerns about the lack of written leases as noted in the February 28, 2002 and August 26, 2002 SCRAA meeting minutes. [FAA Exhibit 1, Item 19, exhibit 22, p. 2 and FAA Exhibit 1, Item 19, exhibit 26, p. 2] Nor is there any written communication voicing the Respondent's concerns with the Complainant's use of the taxiway as noted in the SCRAA's meeting minutes from October 23, 2006 and January 8, 2007. [FAA Exhibit 1, Item 1, exhibit 19, pp 1-2 and FAA Exhibit 1, Item 1, exhibit 20, pp 1-2] At a minimum, this creates an uncertain and inconsistent operating environment in which the sponsor cannot effectively carry out its Federal obligations.

An airport sponsor acts as a proprietor with regard to managing its airport to certain reasonable levels of service, airport decorum, business professionalism, and financial responsibility. Grant assurance 22 prohibits an airport sponsor from exercising its proprietary rights to deny aeronautical access unreasonably or in a manner that is unjustly discriminatory. However, the grant assurances allow a sponsor to apply a standard for reasonable security, personal behavior, and rules of tenancy. [See *SeaSands Air Transport, Inc. v. Huntsville-Madison County Airport Authority*, FAA Docket No. 16-05-17 (August 28, 2006) (Director's Determination, p. 15)] However, vaguely defined minimum standards which are sporadically enforced make it difficult for an airport sponsor to monitor its proprietary rights and consistently defend itself against allegations of unjust discrimination.

While the FAA will not substitute its judgment for that of the Airport owner in matters of administration and management of airport facilities, it is in a unique position to assist airport sponsors in achieving voluntary compliance through prudent advice and counsel. [FAA Order 5190.6A, Sec. 5-1(b)(2)] The Director is thus pointing out the Respondent's deficiencies and recommending appropriate corrective action in order to assist the Respondent in understanding the nature and applicability of compliance obligations affecting its airport.

Accordingly, the Director finds under the circumstances discussed herein, the Respondent does not meet the standard of compliance with regard to Grant Assurance 5, *Preserving Rights and Powers*, and directs the Respondent to perform appropriate corrective action. The corrective action discussed below is intended to assist the SCRAA in better understanding its Federal obligations so that it can fully reclaim its rights and powers.

VII. FINDINGS AND CONCLUSIONS

Upon consideration of the entire Record herein, the applicable law and policy, and for the reasons stated above, the Director finds and concludes:

1. The Respondent did not apply the Airport's Minimum Standards in a way to unjustly discriminate against the Complainant, and is not currently in violation of 49 U.S.C. § 47107(a)(1), and Federal Grant Assurance 22, *Economic Nondiscrimination*.

³³ See footnote 7. Both the Complainant and the signatory to this letter contest its validity. [FAA Exhibit 1 Item 1, p. 14 and FAA Exhibit 1, Item 1, exhibit 25]

2. The Respondent's failure to grant the Complainant an agreement to operate an aeronautical service does not constitute an unreasonable denial of access in violation of 49 U.S.C. § 47107(a)(1), and Grant Assurance 22, *Economic Nondiscrimination*.
3. The Respondent has not limited the provision of specific aeronautical services at the Airport to a single provider, and is not in violation of 49 U.S.C. § 47107(a)(4), and Grant Assurance 23, *Exclusive Rights*.
4. The Respondent's processes and procedures for reviewing the Complainant's request to provide an aeronautical service lack transparency and documentation making them confusing in nature. These incoherent, ad hoc practices cede the Respondent's ability to adhere to the Grant Assurances which constitutes a violation of 49 U.S.C. § 47107(a) and Grant Assurance 5, *Preserving Rights and Powers*.

ORDER

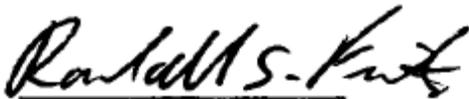
ACCORDINGLY, the Director finds the Sumner County Regional Airport Authority is in violation of Federal law and a Federal grant obligation. The Authority has 30 days to submit a corrective action plan that (1) proposes how the SCRAA will develop a process or procedure for clarifying expectations vaguely defined in its Minimum Standards to potential aeronautical business proponents before decisions on such proposals are voted on by the Authority; (2) establishes a procedure to document and uniformly review on an ongoing basis all aeronautical leases and subleases for space on the Airport in order to be responsive to requests for space by aeronautical users; (3) identifies any expired CASP agreements and establishes a timetable to negotiate any new agreements or replacement agreements as necessary; (4) removes the non-compete clause from Jet Harbor's lease/CASP agreement at the first available opportunity; and (5) develops a process to improve communication between the Authority and aeronautical tenants at the Airport.

Failure to submit a corrective action plan acceptable to the FAA within the time provided, unless extended by the FAA for good cause, will lead to suspension of future grant applications for AIP discretionary grants under 49 U.S.C § 47115 and general aviation airport grants under 49 U.S.C. § 47114(d).

All motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination is an initial agency determination and does not constitute final agency action and order subject to judicial review. [14 CFR 16.247(b)(2).] A party to this Complaint adversely affected by the Director's Determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after service of the Director's Determination.



Director
Office of Compliance and Field Operations

February 27, 2009

Date